

BEFORE THE
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY) DOCKET NO.
) 00 -0259
Petition for expedited approval of) ON REOPEN
implementation of a market-based)
alternative tariff, to become effective)
on or before May 1, 2000, pursuant)
to Article IX and Section 16 -112 of)
the Public Utilities Act.)
)
CENTRAL ILLINOIS PUBLIC SERVICE COMPANY) DOCKET NO.
UNION ELECTRIC COMPANY) 00 -0395
)
Petition for approval of revisions to)
market value tariff, Rider MV.)
)
ILLINOIS POWER COMPANY) DOCKET NO.
) 00 -0461
Proposed new Rider MVI and revisions)
to Rider TC.)
)
CONSOLIDATED

Springfield, Illinois
February 27, 2001

Met, pursuant to notice, at 9:00 A.M.

BEFORE:

MR. LARRY JONES, Examiner

SULLIVAN REPORTING COMPANY, by
Cheryl A. Davis, Reporter, #084 -001662
Carla J. Boehl, Reporter, #084 -002710

1 APPEARANCES:

2 MS. SARAH READ
3 MR. G. DARRYL REED
4 MS. COURTNEY ROSEN
5 Sidley & Austin
6 10 South Dearborn Street
7 Bank One Plaza
8 Suite 5400
9 Chicago, Illinois 60603

10 (Appearing on behalf of Commonwealth
11 Edison Company)

12 MR. CHRISTOPHER W. FLYNN
13 Jones, Day, Reavis & Pogue
14 77 West Wacker
15 Suite 3500
16 Chicago, Illinois 60601-1692

17 (Appearing on behalf of Central Illinois
18 Public Service Company and Union
19 Electric Company)

20 MR. JOSEPH L. LAKSHMANAN
21 500 South 27th Street
22 Decatur, Illinois 62521-2200

 (Appearing on behalf of Illinois Power
 Company)

23 MR. DAVID I. FEIN
24 MR. CHRISTOPHER J. TOWNSEND
25 Piper, Marbury, Rudnick & Wolfe
26 203 North La Salle Street
27 Suite 1800
28 Chicago, Illinois 60601-1293

29 (Appearing on behalf of AES NewEnergy
30 Incorporated)

31

32

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1 PROCEEDINGS

2 (Whereupon prior to the
3 hearing IP Exhibit 1.7 and
4 1.8 were marked for
5 identification.)

6 EXAMINER JONES: Good morning.

7 Pursuant to notice, I call for hearing
8 the following three consolidated dockets: 00-0259,
9 Commonwealth Edison Company, petition for approval
10 of implementation of a market-based tariff; these
11 are partial captions; Central Illinois Public
12 Service Company, Union Electric Company, petition
13 for revisions to market value tariff, Rider MV;
14 Illinois Power Company, proposed new Rider MVI and
15 revisions to Rider TC. The ComEd docket is 0259,
16 Ameren 0395, IP 0461, all 00 prefix dockets. As
17 noted, they are consolidated. This matter is being
18 heard on reopening.

19 At this time we will take the
20 appearances orally for the record. We will assume
21 that your business address and phone number and
22 e-mail addresses are the same that you gave us

1 previously. If not, please update that for us. So
2 you need not give that information unless there is
3 an update to be given, but you may give it if you
4 want to.

5 All right. Let's start with the
6 appearances on behalf of the utility companies with
7 MVI proposals pending, starting with Commonwealth
8 Edison Company.

9 MR. REED: G. Darryl Reed, Sarah J. Read,
10 Courtney A. Rosen, of the law firm of Sidley &
11 Austin, on behalf of Commonwealth Edison Company.
12 My phone number, for the record, area code
13 312/853-7766; my e-mail address, for the record,
14 gdreed@sidley.com.

15 MS. READ: And I will note that is Reed
16 R-E-E-D as opposed to my Read which is R-E-A-D.

17 EXAMINER JONES: Thank you.

18 Ameren Companies.

19 MR. FLYNN: Christopher W. Flynn of Jones,
20 Day, Reavis & Pogue, on behalf of Central Illinois
21 Public Service Company and Union Electric Company.

22 EXAMINER JONES: Okay. Illinois Power.

1 MR. LAKSHMANAN: Joseph L. Lakshmanan, on
2 behalf Illinois Power Company.

3 EXAMINER JONES: Okay. Other parties.

4 MR. FEIN: David I. Fein and Christopher J.
5 Townsend, by the law firm of Piper, Marbury,
6 Rudnick & Wolfe, on behalf of AES NewEnergy,
7 Incorporated.

8 MR. KAMINSKI: Mark G. Kaminski and R.
9 Lawrence Warren, of the Attorney General's Office,
10 on behalf of the People of the State of Illinois,
11 100 West Randolph, Chicago, Illinois 60601.

12 EXAMINER JONES: Thank you.

13 MR. REVETHIS: Steven G. Revethis, Staff
14 counsel, appearing on behalf of the Illinois
15 Commerce Commission Staff, Mr. Examiner.

16 MR. SEIDEL: W. Michael Seidel for the law
17 firm of Defrees & Fiske, appearing on behalf of
18 Central Illinois Light Company.

19 EXAMINER JONES: Thank you.

20 Are there any other appearances to be
21 entered at this time? Let the record show there
22 are not.

1 I believe there was a meeting among many
2 of the parties regarding cross-examination of
3 witnesses, more specifically the order of witnesses
4 and estimated cross-examination times.

5 I believe the first witness on the list
6 was Illinois Power witness Phillip Breezeel. Is
7 that still the plan?

8 MR. LAKSHMANAN: Yes, that is still the plan.

9 EXAMINER JONES: All right. Just one moment.

10 It's my understanding that NewEnergy
11 counsel will have cross-examination questions for
12 Mr. Breezeel. Is that right, Mr. Fein?

13 MR. FEIN: Yes.

14 EXAMINER JONES: Do any other parties have
15 cross-examination questions for Mr. Breezeel?

16 MR. WARREN: The AG does.

17 MR. FEIN: I thought Mr. Robertson did too
18 when we were on the call on Friday, if my memory
19 serves me.

20 MR. KAMINSKI: That's also our memory.

21 MR. LAKSHMANAN: That's also my recollection.

22 EXAMINER JONES: All right.

1 Is Illinois Power ready to call
2 Mr. Breezeel?

3 MR. LAKSHMANAN: We are prepared, and we have
4 provided the Court Reporter with marked copies.
5 Would you like some, Mr. Hearing Examiner?

6 EXAMINER JONES: Is it the same as what was
7 distributed previously?

8 MR. LAKSHMANAN: Yes, it is.

9 EXAMINER JONES: Okay. Then I will not need a
10 copy of that unless there are any changes in it, in
11 either the text or the identification of it.

12 This witness has been previously sworn,
13 so he is still under oath.

14 None of the witnesses who have
15 previously testified will need to be sworn again.

16 MR. LAKSHMANAN: Illinois Power calls Phillip
17 G. Breezeel as its witness.

18 EXAMINER JONES: Just one second.

19 If anybody is having any trouble
20 hearing, let us know, and we'll do whatever we need
21 to do to make sure everybody can hear.

22

1 PHILLIP G. BREEZEEL
2 recalled as a witness on behalf of Illinois Power
3 Company, having been previously duly sworn, was
4 examined and testified further as follows:

5 DIRECT EXAMINATION

6 BY MR. LAKSHMANAN:

7 Q. Would you please state your name and
8 business address for the record?

9 THE WITNESS:

10 A. Phillip G. Breezeel, 500 South 27th
11 Street, Decatur, Illinois 62521.

12 Q. What is your position with Illinois
13 Power Company?

14 A. I'm the Director of Regulated Tariffs
15 and Business Analysis.

16 Q. And have you prepared certain testimony
17 to offer in this docket on reopening?

18 A. Yes, I have.

19 Q. Do you have before you a copy of a
20 document that's been marked for identification as
21 IP Exhibit 1.7 bearing the caption Prepared Direct
22 Testimony on Reopening of Phillip G. Breezeel?

1 A. Yes, I do.

2 Q. Does that document consist of four pages
3 of questions and answers in written form?

4 A. Yes, it does.

5 Q. Is IP Exhibit 1.7 the prepared direct
6 testimony on reopening that you wish to offer in
7 this docket?

8 A. Yes, it is.

9 Q. Do you have any corrections or changes
10 to make to IP Exhibit 1.7?

11 A. No, I do not.

12 Q. If I were to ask you the questions shown
13 on IP Exhibit 1.7 at this hearing, would you give
14 the same answers as shown on that exhibit?

15 A. Yes, I would.

16 Q. Do you have before you a document that's
17 been marked for identification as IP Exhibit 1.8
18 bearing the caption Prepared Surrebuttal Testimony
19 on Reopening of Phillip G. Breezeel?

20 A. Yes.

21 Q. Does that document consist of four pages
22 of questions and answers in written form?

1 A. Yes, it does.

2 Q. Is IP Exhibit 1.8 the prepared
3 surrebuttal testimony on reopening that you wish to
4 offer in this docket?

5 A. Yes, it is.

6 Q. Do you have any corrections or changes
7 to make to IP Exhibit 1.8?

8 A. No.

9 Q. If I were to ask you the questions shown
10 on IP Exhibit 1.8 at this hearing, would you give
11 the same answers as shown on that exhibit?

12 A. Yes, I would.

13 MR. LAKSHMANAN: We offer IP Exhibits 1.7 and
14 1.8 into the record.

15 EXAMINER JONES: Any objections? There are
16 not. Let the record show that IP Exhibits 1.7 and
17 1.8 sponsored by Mr. Breezeel are hereby admitted
18 into the evidentiary record on reopening. 1.7 is
19 prepared direct testimony on reopening. 1.8 is
20 prepared surrebuttal testimony on reopening.

21 (Whereupon IP Exhibits 1.7
22 and 1.8 were received into

1 evidence.)

2 MR. LAKSHMANAN: We would then tender the
3 witness for cross-examination. We would note,
4 however, he has a slight cold, so if he needs a
5 couple of seconds in between things, please give
6 him a chance.

7 EXAMINER JONES: Do we have another appearance
8 to be entered at this time?

9 MR. ROBERTSON: Yes. Eric Robertson, Lueders,
10 Robertson and Konzen, P.O. box 735, 1939 Delmar,
11 Granite City, Illinois 62040, on behalf of the
12 Illinois Industrial Energy Consumers.

13 EXAMINER JONES: Okay. Thank you.

14 All right. I believe there are three
15 parties who do have or may have cross-examination
16 questions for Mr. Breezeel regarding his testimony
17 on reopening. Who wants to go first?

18 MR. FEIN: I'll go first.

19 EXAMINER JONES: Mr. Fein.

20 MR. FEIN: Thank you.

21

22

1 CROSS EXAMINATION

2 BY MR. FEIN:

3 Q. Good morning, Mr. Breezeel.

4 A. Good morning.

5 Q. Have you ever purchased electric power
6 and energy other than for your home?

7 A. No, I have not.

8 Q. Have you ever sold electric power and
9 energy?

10 A. No.

11 Q. You are not a licensed power marketer by
12 the Federal Energy Regulatory Commission?

13 A. No, I am not.

14 Q. Do you have a different understanding of
15 the term optionality adjustment other than that
16 which you state on lines 26 and 27 on page 2 of
17 your direct testimony?

18 A. No.

19 Q. Do you consider yourself an expert on
20 electricity pricing?

21 A. No.

22 Q. In the course of your employment at

1 Illinois Power have you ever been asked to develop
2 retail pricing models for the company?

3 A. No, sir.

4 Q. Are you aware whether Illinois Power
5 employs individuals to develop models to address
6 the issue of retail pricing options?

7 A. I don't know for sure. I believe that's
8 correct, that we do.

9 Q. Have any of these individuals reviewed
10 your testimony that you submitted on reopening in
11 this proceeding?

12 A. Yes.

13 Q. And can you tell us what some of the job
14 titles of those individuals might be who have
15 reviewed your testimony who are involved in
16 developing retail pricing options? Strike that.

17 Could you tell us the job titles of the
18 Illinois Power employees who have reviewed your
19 testimony?

20 A. I don't know their titles offhand, no.

21 Q. But these are individuals who develop
22 models to address issues of retail pricing options,

1 if I understand your testimony.

2 MR. LAKSHMANAN: Objection on the grounds of I
3 mean I think that mischaracterizes what he said,
4 but.

5 MR. FEIN: I'll try to tie it up.

6 Q. You previously answered a question that
7 Illinois Power does have individuals to the best of
8 your knowledge who develop models to address the
9 issue of retail pricing options. Is that correct?

10 A. Yes. At least --

11 Q. And I believe -- sure. I'm sorry.

12 A. At least we have had people that did
13 that in the past.

14 Q. And have some of those people who have
15 done that in the past reviewed the testimony that
16 you submitted on reopening in this proceeding?

17 A. Yes.

18 Q. And you are not aware of what titles
19 those individuals possess at Illinois Power
20 Company.

21 A. That is correct.

22 Q. Now you state that Illinois Power is no

1 longer an active participant in the wholesale
2 trading market. Is that correct?

3 A. That is correct.

4 Q. What do you mean by active?

5 A. We don't participate in the wholesale
6 market.

7 Q. At all?

8 A. That's my understanding, yes.

9 Q. Do you know on what date Illinois Power
10 stopped being an active participant in the
11 wholesale trading market?

12 A. An exact date, no.

13 Q. Can you give a range of dates?

14 A. In the fall of '99 time frame.

15 Q. When Illinois Power was an active
16 participant in the wholesale trading market, were
17 you as an Illinois Power employee actively involved
18 in the wholesale trading market?

19 A. No.

20 Q. Do you know what goes into the cost of
21 electricity?

22 A. No.

1 Q. Do you have any opinion whether Illinois
2 Power typically, when it did sell power, sold power
3 at prices that did not recover its costs?

4 A. No opinion.

5 Q. Is it also correct that Illinois Power
6 no longer buys electric power and energy?

7 A. We no longer buy power and electric
8 energy in the wholesale market.

9 Q. So would it be correct to say that
10 Illinois Power does not sell freed-up power and
11 energy to retail customers?

12 A. I don't know.

13 Q. What would you expect Illinois Power to
14 do with "freed up" power and energy if there was a
15 customer in Illinois Power's service territory that
16 switched to delivery services?

17 MR. LAKSHMANAN: Object on the grounds this is
18 getting beyond the scope of both his direct, his
19 surrebuttal, and all of the issues that are at
20 issue in this reopening which is fairly narrow.

21 MR. FEIN: The witness testifies about the
22 company's lack of activity in the wholesale trading

1 market, and I'm just asking him one question, how
2 he would expect that to operate if the company had
3 customers who left their service and went to
4 delivery service, therefore freeing up power and
5 energy to be sold, which I thought was one of the
6 issues.

7 EXAMINER JONES: I think that's a fair
8 question. We will ask the witness to answer that
9 if he knows.

10 A. Can you repeat the question again?

11 Q. Sure. What would you expect Illinois
12 Power to do with "freed up" power and energy if
13 there was a customer in Illinois Power's service
14 territory that switched to delivery services?

15 A. Physically what they would do I don't
16 know. You know, theoretically, I would expect that
17 they would take less under their power purchase
18 agreement.

19 Q. Now are you aware that in this
20 proceeding that the Ameren company witness has
21 acknowledged the use of an optionality model?

22 A. I have seen that, yes.

1 Q. Are you also aware that the Ameren
2 witness has stated that such an adjustment would
3 have a relatively minor impact upon pricing?

4 A. I don't recall that.

5 Q. Did you review that testimony that was
6 filed?

7 A. Yes, I did.

8 MR. FEIN: No further questions.

9 EXAMINER JONES: Okay. Thank you, Mr. Fein.

10 I believe other parties may have
11 questions, or counsel for AG and IIEC.

12 MR. KAMINSKI: Okay.

13 Mr. Breezeel, Mark Kaminski for the
14 Attorney General's Office. Just a couple
15 questions.

16 CROSS EXAMINATION

17 BY MR. KAMINSKI:

18 Q. First, your direct testimony on
19 reopening states that since Illinois Power is not
20 an active participant in the wholesale trading
21 market, NewEnergy's questions regarding optionality

22 --

1 EXAMINER JONES: If you could maybe read a
2 little slower, I think that would help our Court
3 Reporter.

4 MR. KAMINSKI: Sorry.

5 EXAMINER JONES: Thank you.

6 Q. Your direct testimony on reopening
7 states that since Illinois Power is not an active
8 participant in the wholesale trading market, then
9 NewEnergy's questions regarding any optionality
10 adjustment is moot. Correct?

11 A. That's correct.

12 Q. And you stated that IP doesn't purchase
13 any power on the wholesale market.

14 A. That's correct.

15 Q. So IP gets its power through its power
16 purchase agreement?

17 A. That's correct.

18 Q. Under this agreement, does Illinois
19 Power schedule power with those generators?

20 A. I don't know.

21 Q. You don't know if Illinois Power has an
22 agreed rate for scheduled power under the PPA?

1 A. No, I do not.

2 Q. You don't know if Illinois Power exceeds
3 the power -- that if customers of Illinois Power
4 sometimes exceed the power that IP has scheduled
5 then? I'm sorry. Let me ask that one again.

6 You don't know -- do you know if
7 Illinois Power's customers sometimes exceed the
8 power that is scheduled for them under the PPA?

9 A. If -- no, I do not know.

10 Q. And do you know from where or from whom
11 IP gets its power to cover these unscheduled
12 demands?

13 MR. LAKSHMANAN: Objection on the grounds that
14 it assumes that there are unscheduled demands,
15 since he just stated that he doesn't know if there
16 are any such demands.

17 Q. How long is the PPA in effect?

18 MR. LAKSHMANAN: Objection on the grounds as
19 to whether there's -- if he can answer the
20 question.

21 Q. Do you know how long the PPA is in
22 effect?

1 A. There are two PPAs that I know about.

2 Q. Do you know how long each one of those
3 is in effect?

4 A. One of them, which is for the power
5 we're purchasing back from the Clinton nuclear
6 plant, is in effect I believe through 2004. The
7 other PPA, I'm not sure of the term of that.

8 Q. Do you know how Illinois Power will
9 obtain power after the end of the PPA terms?

10 A. No.

11 MR. LAKSHMANAN: Objection on the ground that,
12 again, I believe this is going well beyond the
13 scope not only of his testimony but of the issues
14 on reopening which were optionality, the effect of
15 the Bloomberg announcement, and a limited set of
16 off-peak issues. I'm not sure how what happens
17 with the PPA at its termination is relevant to any
18 of that.

19 MR. KAMINSKI: This witness stated that since
20 Illinois Power isn't an active participant in the
21 wholesale trading market, that these questions of
22 optionality are moot. Now the question of what's

1 going to happen after the PPA is finished as to
2 whether that optionality question is moot then I
3 think is a reasonable question.

4 EXAMINER JONES: All right. Based on that, we
5 will allow the question.

6 A. Can you repeat the question again?

7 Q. Do you know how Illinois Power will
8 acquire power after the expiration of these power
9 purchase agreements?

10 A. No, I do not.

11 Q. Do you know if Illinois Power's load
12 forecast is always 100 percent accurate?

13 A. I'm sure it is.

14 Q. It is?

15 (Laughter)

16 A. Forecasts by their nature are usually
17 wrong.

18 Q. Now when you're stating that the
19 forecasts are not 100 percent accurate, do you know
20 how Illinois Power covers those deviations from the
21 forecasts?

22 A. No, I do not.

1 Q. Do you know if there's any costs
2 associated with covering these differences from the
3 forecasts?

4 A. No.

5 Q. And do you know how these costs are
6 recovered?

7 A. I don't know that there are costs so I
8 don't know how they're covered.

9 Q. Okay. On to a different line.

10 Regarding the ICE, can parties other
11 than utilities and power marketers view the
12 information posted on ICE?

13 A. I'm not sure who all can get access into
14 the ICE exchange data.

15 Q. Do you know whether it costs those that
16 access the ICE or subscription service?

17 A. I know you can get guest access, which
18 Illinois Power has -- is how they've got the
19 information they have today.

20 Q. And did that cost anything?

21 A. Not that I'm aware of.

22 Q. How did they gain this guest access?

1 A. Contacted the ICE.

2 Q. Do you know what the volume of Into
3 Cinergy contracts traded on ICE is daily?

4 A. No, I do not.

5 Q. How will Illinois Power include ICE data
6 in its market value determination?

7 A. It will be considered as a different
8 source traded, just like we trade Bloomberg,
9 Altrade, and Power Markets Week. It would be just
10 the addition of, you know, a fourth source rather
11 than three.

12 Q. Well, specifically, how will it be
13 averaged with the other sources?

14 A. I'm not sure I understand the question.

15 Q. Well, you're saying that it's going to
16 be treated the same as the other sources, but my
17 question is, is there going to be some kind of a --
18 is it going to be based entirely on volume? Is ICE
19 going to be given equal standing with Bloomberg and
20 Altrade?

21 A. Equal standing? Yes. It will be
22 treated the same as the other sources. If there

1 are, you know, more volume on ICE, then ICE will be
2 given greater weight than Altrade, Bloomberg, and
3 Power Markets Week.

4 Q. And how will the data be collected from
5 ICE?

6 A. Again, I'm not sure of the question.

7 Q. Is it going to be on a snapshot basis
8 like Altrade and Bloomberg?

9 A. Yes.

10 Q. How many times? The same? Twice a day?

11 A. I believe that's correct, yes.

12 Q. Now you also mention other sources of
13 price data. How will you evaluate potential new
14 sources of price data for inclusion in the tariff?

15 A. We will look at -- if somebody brings to
16 us a new source and says we think this new exchange
17 is providing appropriate information, we will look
18 to see what kind of, you know, trades are taking
19 place, you know, if it does have Into Cinergy, if
20 it is trading 5 x 16. As long as we are sure that
21 the commodity is the same as we're measuring on ICE
22 and Bloomberg, Altrade, and Power Markets Week,

1 then we would certainly consider adding that as an
2 additional source.

3 Q. And would you, upon getting this --
4 having this either suggested or discovering it
5 yourself, how would you implement the change to the
6 tariff?

7 A. We would file a revision to Appendix 1
8 to the tariff, which is where we list the sources.

9 Q. Now you discussed whether they traded 5
10 x 16, the relative volume. Is Illinois Power
11 willing to agree to standardized procedures in
12 evaluation and selection of new data sources, such
13 as minimum volumes or relative to transparency?

14 A. I would think that is something we would
15 certainly be willing to discuss with parties.

16 MR. KAMINSKI: Thank you.

17 THE WITNESS: You're welcome.

18 EXAMINER JONES: All right. Mr. Robertson.

19 MR. ROBERTSON: If I could have one minute,
20 I'd like to talk to Mr. Lakshmanan for a second.
21 We don't need to leave the room for it.

22 EXAMINER JONES: Go ahead.

1 (Whereupon at this point in
2 the proceedings an
3 off-the-record period
4 transpired.)

5 EXAMINER JONES: All right. I think we're
6 ready to resume here.

7 Mr. Robertson.

8 MR. ROBERTSON: Thank you.

9 CROSS EXAMINATION

10 BY MR. ROBERTSON:

11 Q. Mr. Breezeel, would you turn to page 4
12 of your direct testimony, IP Exhibit 1.7?

13 A. Okay.

14 Q. I direct your attention to lines 86 and
15 87, at least on my copy. There you state that the
16 addition of ICE, and I assume you're talking about
17 the addition to ICE to the IP market basket in its
18 market value index approach?

19 A. That's correct.

20 Q. You state that the addition of ICE will
21 not reduce the amount of data available and
22 therefore cannot detract from IP's proposal. Is

1 that correct?

2 A. That's correct.

3 Q. Now would it be correct to say that the
4 converse is also true? That a reduction in the
5 amount of data available could detract from a
6 utility proposal to determine market value on the
7 basis of an exchange traded or other market -traded
8 index future contract or contracts?

9 A. It's possible given the right
10 circumstances.

11 Q. That's my next question. How might this
12 occur?

13 A. If it would result in insufficient data
14 to perform whatever calculations need to be
15 performed.

16 Q. Now when you say in the presence of
17 insufficient data, can you quantify that for us?
18 What do you mean by insufficient data? How
19 deficient would the data have to be?

20 A. At least according to the methodology
21 that we have proposed, it would have to be the
22 existence basically of no data for the snapshot

1 period.

2 Q. Now would you consider the possibility
3 that the absence of actual trades might indicate
4 that there was not sufficient data in which --
5 well, strike that.

6 Would you consider that the absence of
7 actual trades might indicate that there was
8 insufficient data?

9 A. Absent trades, we would also rely on bid
10 offers.

11 Q. Now if there was only one bid offer in a
12 twelve-month period, would that be sufficient data,
13 in your opinion, to justify the use of a particular
14 exchange?

15 A. It could be.

16 Q. All right. Under what circumstance
17 might it be?

18 A. As long as it was, you know, a valid bid
19 offer.

20 Q. All right. If that were the only
21 exchange being used, would you still consider that
22 to be sufficient data?

1 A. I'm not sure I understand.

2 Q. Well, if there were only one exchange in
3 the utility's approach, and I'm not necessarily
4 saying this is true of IP's approach, but let's
5 suppose the approach only had one electronic
6 exchange for on-peak pricing, and there was only
7 one bid and offer and no actual transactions in a
8 twelve-month period, do you think that that
9 exchange would be worthy of use in the market value
10 index approach?

11 A. In this particular hypothetical, it very
12 well could be.

13 Q. All right. Why would that be the case?

14 A. Because it still provides a data point
15 that parties are, you know, willing to trade.

16 Q. It's your understanding that a bid and
17 an offer represent a price at which parties are
18 willing to trade?

19 A. It's a pair of prices that someone is
20 willing to sell and someone is willing to buy.

21 Q. And if I'm willing to sell my house for
22 \$5 million but somebody is only willing to buy it

1 for \$100,000, is that necessarily representative of
2 the market price of my house?

3 A. It's somebody's representation of the
4 market price of that house, yes.

5 Q. All right. Okay.

6 Now am I correct that you believe that a
7 proposed additional data source must meet certain
8 basic requirements before it's included in your
9 market basket approach?

10 A. That's correct.

11 Q. And what are those certain basic
12 requirements?

13 A. We haven't compiled an exhaustive list.
14 As I mentioned previously, some of the things we
15 would look at would be, you know, is it trading in
16 Into Cinergy or is it 5 x 16 power, and I'm sure
17 there would be other things that when we sat down
18 with different, you know, parties to come up with a
19 list that would make the list.

20 Q. Would it have to be an index for
21 electricity? It wouldn't be an index for the sale
22 of houses. Is that correct?

1 A. That's correct.

2 Q. Would it have to be transparent?

3 A. I would guess that would be something
4 that could be discussed by parties interested in
5 the outcome, but I would think it would probably be
6 better if it were transparent.

7 Q. Would anybody other than Illinois Power
8 have to have access to it?

9 A. I'm not sure what you're asking.

10 Q. Well, I mean if Illinois Power were the
11 only party who had access to the data that was
12 provided by this exchange, would that still be an
13 acceptable data source?

14 MR. LAKSHMANAN: Maybe you can -- I object on
15 the grounds that it's also not clear. Illinois
16 Power is the only party that has access at all?

17 MR. ROBERTSON: When I said Illinois Power was
18 the only party to have access to it, that's what I
19 meant.

20 Q. Do you understand the question,
21 Mr. Breezeel?

22 A. In order for it to be a viable index,

1 you know, it would certainly have to be auditable.
2 You know, to the extent that Illinois Power could
3 provide, you know, the information to a third party
4 such as Staff, you know, that could be viable.

5 Q. Do you believe that it's important for
6 all participants in the market, whether they're
7 wholesale or retail participants, to have access to
8 this type of data?

9 A. Is it necessary? What was the word you
10 used?

11 Q. Important.

12 A. To the extent that the parties have
13 access, I think it is good. Could it be a viable
14 index if not all parties have access? Yes, it
15 could.

16 Q. Do you know whether it would be
17 consistent with the law in Illinois?

18 A. No opinion.

19 Q. Do you have an opinion that it should be
20 consistent with the law in Illinois?

21 MR. LAKSHMANAN: Objection on the ground that
22 he has not been offered as a legal witness.

1 MR. ROBERTSON: I wanted to see if it was in
2 his knowledge.

3 Q. Is it Illinois Power's position that
4 whatever index is adopted should be consistent with
5 the law in Illinois?

6 A. I think that's a fair assumption.

7 Q. Now would you turn to page 3 at lines 47
8 -- I think it's 47.

9 A. Are we still in Exhibit 1.7?

10 Q. Hold on a second. Yes.
11 You state there that you recognize that
12 some have noted that Altrade and Bloomberg may have
13 seen a lessening of activity for other, non-ComEd
14 hubs. Is that correct?

15 A. Yes.

16 Q. Now over what period of time has that
17 lessening of activity occurred?

18 A. I'm not sure.

19 Q. What period of time did you have in mind
20 when you made this statement, or did you have a
21 period of time?

22 MR. LAKSHMANAN: Objection on the grounds that

1 you're assuming that he's the one making the
2 statement on that. All he's stating is that others
3 have noted this.

4 MR. ROBERTSON: Okay.

5 Q. So this is based on something you've
6 read in the trade press or something you've read in
7 the testimony here?

8 A. In general, a reference to AG testimony.

9 Q. All right. Are you aware, personally
10 aware, of a decline in the Altrade/Bloomberg
11 activity?

12 A. No.

13 Q. Do you believe that the Intercontinental
14 Exchange indicates a more robust exchange than
15 either Altrade or Bloomberg?

16 A. It appears that that's the case, the
17 snapshot that we took.

18 Q. Can you describe the snapshot that you
19 took for me?

20 MR. LAKSHMANAN: Objection on the ground that
21 it's confidential. We have supplied that
22 information on a confidential basis to those who

1 are capable of seeing it and have asked for it.

2 Q. Do you have the company's response to
3 IIEC Second Data Request, Item 2-3?

4 A. Yes, I do. Just one minute.

5 What item?

6 Q. 2-3.

7 A. Okay.

8 Q. Is it true that in response to that data
9 request, which asked for an assessment of the
10 volume of trading of Into Cinergy on-peak forwards
11 on the ICE exchange as compared to Altrade and
12 Bloomberg power match exchanges, that the company
13 stated that while it was not able to specifically
14 identify the data in detail on the ICE, that it had
15 observed 288 separate trades representing 5,934,400
16 megawatt-hours of contracts for a hypothetical
17 March 1 effective date sampled from January 24
18 through February 7, 2001?

19 A. Yes.

20 Q. And that was for ICE?

21 A. That's correct.

22 Q. And you further -- the company further

1 stated that each contract had multiple trades with
2 no month having fewer than three and two contracts
3 having 100 or more. Is that correct?

4 A. That's correct.

5 Q. And is it true that the company reported
6 that for the same period Altrade and Bloomberg
7 combined had one trade?

8 A. That's correct.

9 Q. Now that meant that either Altrade or
10 Bloomberg, one of those, had zero trades. Isn't
11 that true?

12 A. It had zero trades, yes.

13 Q. And under our hypothetical, then one of
14 those exchanges wouldn't be suitable for use
15 because no data was provided.

16 A. Not necessarily, because there may have
17 been and I believe there were bid offers.

18 Q. Okay. I did have one question at the
19 end of your rebuttal testimony --

20 A. Surrebuttal testimony?

21 Q. Yes, IP Exhibit 1.8, page 4, line 71.

22 A. Okay.

1 Q. Strike that.

2 I thought somewhere in here you had
3 indicated that no one had opposed IP's bi-monthly
4 proposal.

5 A. On line 77.

6 Q. All right. Okay. Are you aware that
7 IIEC made certain comments about the company's
8 proposal?

9 A. Not offhand, no.

10 Q. Are you aware that -- then you're not
11 aware that IIEC did not necessarily agree with the
12 company's proposal absolutely?

13 A. No.

14 Q. And lastly, are you aware of any
15 recommendation IIEC made with regard to this
16 proposal before its adoption by the Commission?

17 A. I seem to remember that there were a
18 couple of caveats that IIEC was proposing.

19 Q. Do you know whether or not those caveats
20 are acceptable to the company?

21 A. I believe that they are with the
22 additional caveat that we can't accept, you know,

1 someone coming from a RES back to PPO with the
2 short amount of time that you are proposing.

3 MR. ROBERTSON: I have nothing further.

4 EXAMINER JONES: Is there any redirect of this
5 witness?

6 MR. LAKSHMANAN: If I could have a five-minute
7 break, also give him a chance to get another drink,
8 I think there may be little or none.

9 EXAMINER JONES: All right. So you want a --
10 you're proposing a five-minute break for that?

11 MR. LAKSHMANAN: Yes, please.

12 EXAMINER JONES: Okay. We hereby break for
13 five minutes.

14 (Whereupon a short recess
15 was taken.)

16 EXAMINER JONES: Back on the record.

17 Is there any redirect?

18 MR. LAKSHMANAN: Just a very few number of
19 questions.

20 RECROSS EXAMINATION

21 BY MR. LAKSHMANAN:

22 Q. Mr. Breezeel, do you recall a line of

1 questioning relating to Illinois Power's wholesale
2 activities?

3 A. Yes, I do.

4 Q. Is it your understanding that Illinois
5 Power Company buys and sells electricity in the
6 wholesale market for reliability purposes in the
7 event an emergency would be declared?

8 A. Yes, we do.

9 Q. Is it also your understanding that
10 consistent with the power purchased arrangement
11 that you discussed, that Illinois Power on occasion
12 will make wholesale transactions either with regard
13 to a facility known as the Joppa plant or with the
14 Tennessee Valley Authority?

15 MR. FEIN: I would object. Is counsel
16 testifying or is the witness testifying?

17 MR. LAKSHMANAN: No, I'm asking if it's his
18 understanding. These are consistent with the PPO.

19 MR. FEIN: It's a leading question. I would
20 object to that.

21 EXAMINER JONES: Any response?

22 MR. LAKSHMANAN: I believe I'm just trying to

1 clarify what his understanding was based on the
2 questions that were asked on cross.

3 EXAMINER JONES: I don't think that is
4 necessarily a direct response to that particular
5 objection.

6 MR. LAKSHMANAN: I understand.

7 EXAMINER JONES: The objection is sustained.
8 You have leave to rephrase the question.

9 MR. LAKSHMANAN: Thank you.

10 Q. Do you have any further understandings
11 as to what purchases and/or sales Illinois Power
12 may or may not have made on the wholesale market in
13 addition to the one you described in your
14 cross-examination testimony?

15 A. I had forgotten we had power purchased
16 some preexisting power purchase agreements with the
17 Joppa plant and TVA, and with those plants we
18 occasionally do or with those entities we
19 occasionally do buy and sell through an agent.

20 MR. LAKSHMANAN: I have no further questions.

21 EXAMINER JONES: Thank you.

22 Is there any recross?

1 MR. WARREN: I just have one, Your Honor.

2 RECROSS EXAMINATION

3 BY MR. WARREN:

4 Q. The power purchase agreement, the prices
5 are set on what it's going to cost you for the
6 power. Is that correct? In the power purchase
7 agreement itself?

8 A. Some power purchase agreements specify
9 it that way; some don't.

10 Q. Okay. Do the power purchase agreements
11 that IP have in place in effect right now have the
12 prices that they would pay for energy set, already
13 set in the agreement?

14 A. I do not have the pricing information on
15 all of the power purchase agreements.

16 Q. When you do go to -- you mentioned that
17 you go to -- occasionally would have to go to these
18 other generators to purchase power on the wholesale
19 market. When that does happen, is any cost or
20 effect of load uncertainty or what we're calling in
21 this reopened docket optionality, is anything taken
22 into account in the price of the power that you

1 purchase at that point for that factor?

2 A. I don't know.

3 Q. When you say you don't know, are you
4 saying that it doesn't happen or you just actually
5 aren't aware whether it happens or not?

6 A. I don't know whether it happens or not.

7 Q. It could happen though as far as you
8 know.

9 A. As far as I know, it could happen.

10 MR. WARREN: Okay. I have no further
11 questions, Your Honor.

12 EXAMINER JONES: Is there any other recross?
13 Okay. Is there any re-redirect? There is not.
14 That concludes the questions for this witness.
15 Thank you, sir.

16 (Witness excused.)

17 EXAMINER JONES: Off the record regarding
18 scheduling.

19 (Whereupon at this point in
20 the proceedings an
21 off-the-record discussion
22 transpired, during which

1 time ComEd Exhibits 11.0,
2 12.0, 13.0, 14.0, and 14.0 -P
3 were marked for
4 identification.)

5 EXAMINER JONES: All right. Back on the
6 record.

7 I believe by agreement of the parties,
8 the ComEd witnesses will go next. Is that right?

9 MR. REED: That's correct, Mr. Examiner.

10 EXAMINER JONES: And who is the first of those
11 witnesses?

12 MR. REED: ComEd's first witness in this
13 reopened proceeding will be Mr. Lawrence F.
14 Leonard, and he has not previously been sworn in in
15 this proceeding.

16 EXAMINER JONES: Sir, please raise your right
17 hand to be sworn.

18 (Whereupon the witness was
19 sworn by Examiner Jones.)

20 EXAMINER JONES: Okay. Thank you. Have a
21 seat.

22 THE WITNESS: Thank you.

1 LAWRENCE F. LEONARD
2 called as a witness on behalf of Commonwealth
3 Edison Company, having been first duly sworn, was
4 examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. REED:

7 Q. Would you please state your name,
8 spelling your last name for the record?

9 THE WITNESS:

10 A. Lawrence F. Leonard, L -E-O-N-A-R-D.

11 Q. And by whom are you employed?

12 A. Commonwealth Edison Company, Chicago,
13 Illinois.

14 Q. And what is your position with
15 Commonwealth Edison Company?

16 A. I am the Director of Energy Acquisition
17 for ComEd.

18 Q. You have before you, Mr. Leonard, two
19 documents which have been marked by the Court
20 Reporter, the first designated the Direct Testimony
21 of Lawrence F. Leonard on Reopening and designated
22 Commonwealth Edison Exhibit 11.0. This document

1 consists of seven pages of text in question and
2 answer form. Does this document constitute your
3 direct testimony on reopening in this proceeding?

4 A. Yes.

5 Q. Was this document prepared by you or
6 under your direction?

7 A. Yes.

8 Q. Are there any changes, additions, or
9 modifications that you'd like to make to this
10 document?

11 A. No.

12 Q. If I were to ask you the same questions
13 as contained in this document today, would your
14 answers be the same?

15 A. Yes.

16 Q. You also have before you another
17 document designated Surrebuttal Testimony of
18 Lawrence F. Leonard on Reopening designated by the
19 Court Reporter as Commonwealth Edison Exhibit 12.0
20 consisting of three pages of text in question and
21 answer form. Does this document constitute your
22 surrebuttal testimony in this proceeding?

1 into evidence.)

2 EXAMINER JONES: There are some parties who
3 have cross-examination questions for Mr. Leonard.

4 Mr. Fein.

5 MR. FEIN: Thank you, Mr. Examiner.

6 CROSS EXAMINATION

7 BY MR. FEIN:

8 Q. Good morning, Mr. Leonard.

9 A. Good morning.

10 Q. How long have you held your current
11 position of Director of Energy Acquisition?

12 A. Approximately five months.

13 Q. What does your position entail as
14 Director of Energy Acquisition?

15 A. I'm responsible for assuring that the
16 bulk energy supply for ComEd retail bundled and
17 unbundled customers as well as control area energy
18 and other ancillary services are obtained by ComEd
19 to assure reliable service.

20 Q. Approximately how many employees report
21 to you?

22 A. Eight -- seven, seven employees.

1 Q. And how would you describe their jobs or
2 functions under your direction?

3 A. Their functionality is to assure that
4 all the contractual terms associated with our
5 wholesale purchases and sales are met; also to
6 assure that the methodology ComEd proposed for the
7 market value index with respect to the screen
8 snapshots is implemented completely and
9 efficiently.

10 Q. Do any of the -- I can't remember; did
11 you say seven or eight?

12 A. I said seven.

13 Q. Okay. Do any of the seven employees
14 hold advanced degrees in finance?

15 A. Yes.

16 Q. Now to whom do you report?

17 A. I report to Arlene Juracek, vice
18 president.

19 Q. Do you report to a risk committee at
20 Commonwealth Edison?

21 A. No.

22 Q. Are you familiar with the concept of a

1 risk committee?

2 A. Yes.

3 Q. Does the company have a functional
4 equivalent to a risk committee?

5 A. Yes.

6 Q. Does Ms. Juracek report to the risk
7 committee?

8 A. The risk committee does not report in
9 the same line organization as the entities who are
10 involved in the wholesale transactions. In order
11 to provide independent oversight, it's a functional
12 organization that goes across multiple line
13 organizational bounds.

14 Q. Do you in your position buy and sell
15 electric power and energy on behalf of the company?

16 A. Yes.

17 Q. Do you direct others in evaluating the
18 opportunity to buy or sell electricity on behalf of
19 the company?

20 A. Yes.

21 Q. Now you did not present testimony in the
22 earlier phase of this proceeding. Correct?

1 A. Yes, that is correct.

2 Q. Now in your surrebuttal testimony at
3 page 2, line 22, you indicate that a ComEd trader
4 uses -- has used the phrase subjective judgment in
5 determining whether to make an offer to serve any
6 given load, and that sentence at least on my copy
7 continues on to the next page. Do you see that?

8 A. Subjective judgment and subjective
9 negotiations, yes.

10 Q. Does this mean that there are no
11 guidelines that a ComEd trader is given?

12 A. A ComEd trader considers many inputs.
13 There are guidelines and limits, but the process is
14 an iterative one between the trader representing us
15 as a buyer or seller and the counterparty.

16 Q. Are any of these guidelines the result
17 of modeling that seeks to estimate the risk that
18 loads will be different than the average of past
19 loads?

20 A. I would not categorize the models that
21 are used as establishing a guideline but rather as
22 an input to the decision-making process.

1 Q. So if I understand your answer, you're
2 saying that modeling is used, but more in the lines
3 of an input to the process.

4 A. Yes, sir.

5 Q. Are there any standards that ComEd
6 traders are suppose to use in calculating an offer
7 or accepting an options contract?

8 A. Each options contract is looked at and
9 is considered in light of the factors that would
10 influence the price paid for that options contract.
11 As other parties have testified, some of those
12 changing parameters are the forward price of the
13 commodity in the marketplace, the computed
14 volatility, if you will, of the commodity in the
15 marketplace, the term of the contract, so forth.

16 Q. Is there any specific guidance or
17 standard that ComEd traders are given with respect
18 to when they must hedge or buy an option and what
19 the fair price for the option should be?

20 A. Again, an option evaluation is not the
21 result of any type of discreet black box model.
22 Different models are used as well as judgment of

1 the current market conditions that enable the
2 trader to evaluate that specific option and what
3 premium or price should be paid for it.

4 Q. Now if you could please turn to your
5 direct testimony, page 3, line 15, the sentence
6 beginning with the word "Suppliers", and you
7 indicate that suppliers may choose to use options
8 to accomplish two goals at once. When you use the
9 term "supplier" in that passage, could you define
10 that term?

11 A. My definition of supplier in that
12 sentence was someone who has an obligation or has
13 chosen to serve retail load or, if that load is not
14 being served in a particular instance, to be able
15 to profit from the unwinding of the option in the
16 wholesale marketplace.

17 Q. With that definition, would I be correct
18 to state that an ARES would be considered a
19 supplier in this context?

20 A. Yes, sir.

21 Q. Now with respect to that sentence in
22 your testimony, why do you believe that a supplier

1 would choose to use options?

2 A. I can't speak for the suppliers, but I
3 will tell you what considerations that ComEd could
4 use for an option. One of them would be to enable
5 it to sell at a fixed price that it believed would
6 render them a profit if market prices went down.
7 Another reason we would buy an option is to be able
8 to cap our upward price exposure. On occasion we
9 will sell options in order to get the cash
10 associated with the premium paid to us.

11 Q. Can an ARES similarly use options when
12 serving customers to ensure against an upward price
13 exposure?

14 A. I don't see why not.

15 Q. Similarly, could an ARES use options to
16 sell at a fixed price if they believe it would
17 render them a profit?

18 A. I don't see why not.

19 Q. Might the supplier decide not to buy
20 such option?

21 A. Absolutely might.

22 Q. What risk would a supplier face if it

1 chose to provide full requirements service but
2 chose not to buy an option?

3 A. It's not exactly correlated that if a
4 supplier doesn't buy an option, he changes his risk
5 profile. Let me explain what I mean.

6 Whether or not a supplier buys an option
7 is, in my opinion, driven more as to what's in
8 their supply and sales portfolio. For example, if
9 a supplier has physical ownership or contractual
10 ownership of a generating plant that's under their
11 control, they will be able to hedge their
12 obligations without going into the options market.

13 Q. If a supplier chose to provide full
14 requirements service and did not buy an option, the
15 possibility exists that they would be exposed to
16 price exposure. Correct?

17 A. That price exposure could give them
18 windfall profits, and it can also expose them to
19 additional costs. It simply depends how it fits in
20 their portfolio of resources.

21 Q. Do you know whether Commonwealth Edison
22 offers any products to customers that are designed

1 to serve unique load requirements such as variable
2 load?

3 A. Yes.

4 Q. And what are some of those products?

5 A. The products that are always available
6 are under ComEd's Open Access Transmission Tariff
7 as approved by FERC. That includes what is
8 generically referred to as ancillary services such
9 as regulation and load following, also includes
10 generation and balance service, as well as retail
11 energy supplier imbalance service.

12 Q. Are there any other services that come
13 to mind that the company offers to serve unique
14 load requirements?

15 A. Yes.

16 Q. And what are some of those?

17 A. Demand-side management programs.

18 Q. Any others that come to mind?

19 A. Negotiated bilateral contracts with
20 other wholesale counterparties that might have
21 specific load shapes, for example, as I've
22 mentioned in my testimony, the so-called Aztec

1 pyramid profiling.

2 Q. Now you indicate in your testimony that
3 you're confused with NewEnergy's use of the term
4 optionality. Is that correct?

5 A. Yes.

6 Q. Have you reviewed the briefs and
7 testimony filed by NewEnergy in this proceeding?

8 A. That's what caused my confusion.

9 Q. Have you reviewed the testimony of
10 NewEnergy witness Daniel Somers?

11 A. Yes, I have.

12 Q. Specifically, have you reviewed pages 4
13 through 5 of his testimony?

14 A. Give me a moment, please.

15 Q. Sure.

16 (Pause in the proceedings.)

17 A. I apologize. It's taking me time to
18 find it.

19 Q. Take your time. That's fine.

20 A. I regret I can't find it with the papers
21 I've brought, but if someone could provide me a
22 copy, I'd be glad to take a look at it.

1 Q. Okay.

2 A. It's my recollection that in the
3 different testimonies submitted by NewEnergy --
4 thank you very much -- the term optionality was
5 defined in multiple ways. The part that sticks
6 with me, at one point it was simply defined as a
7 cost, and another part, which was rather strange to
8 me, it was defined as insurance.

9 Q. If you could turn to page 4 of that
10 testimony that you were just provided with, and
11 particularly the question beginning at the bottom
12 of page 4, continuing on to the next page, and ask
13 you to just take a moment and review that, if you
14 haven't already, and if you could identify what in
15 particular you're confused about in that one
16 question and answer.

17 (Brief pause in the proceedings.)

18 A. I've never in my experience either in
19 the wholesale energy group of ComEd nor in energy
20 acquisition ever saw the phrase variability
21 insurance, and that's what led to my confusion.

22 Q. Did you attempt to contact any employee

1 or representative from NewEnergy to obtain a better
2 understanding of that term?

3 A. No.

4 Q. Are you aware that the company had the
5 ability to issue data requests in this proceeding
6 to further clarify what is meant by any uncertainty
7 that you have?

8 A. Yes.

9 Q. And you're aware that the company did
10 not ask NewEnergy to offer any further definition
11 of the term optionality.

12 A. My recollection of the data request did
13 not ask for additional clarification. I thought
14 that might come up from you, counselor.

15 MR. FEIN: I move to strike the last portion
16 of his answer.

17 EXAMINER JONES: Which portion?

18 MR. FEIN: As nonresponsive.

19 EXAMINER JONES: Which portion?

20 MR. FEIN: The I'd expect you, counsel.

21 EXAMINER JONES: Motion granted.

22 Q. Would it be correct that a number of

1 Commonwealth Edison wholesale employees are moving
2 to the Exelon power team?

3 A. Yes, sir.

4 Q. Would you expect those employees to be
5 confused if during their job interviews the
6 interviewer asked them about the term optionality?

7 A. I don't know how they'd feel.

8 Q. I believe in your direct testimony, the
9 sentence begins at the bottom of page 2, continues
10 through the top of page 3, you state that prices
11 are largely determined by what's going on in the
12 market. Is that a correct reading of your
13 testimony?

14 A. Largely driven by what's going on in the
15 market, yes, sir.

16 Q. Now by that statement, you're not
17 suggesting that to determine the value of a
18 particular type of electricity product ComEd solely
19 looks to the market to price that product.

20 A. Not solely to what we've been talking --
21 what I've been talking about and I believe this
22 forum has been talking about the market. Yes, I

1 agree with you, not solely the market.

2 Q. In other words, the company would
3 provide some sort of -- would perform some sort of
4 analysis to determine the value of various
5 electricity products that it's considering either
6 buying or selling.

7 A. It would be part of many inputs that the
8 transactor or trader would consider when evaluating
9 a deal. Yes, sir.

10 Q. And I would imagine that Commonwealth
11 Edison is capable of estimating the value of an
12 option that would permit the company to cover the
13 risk of serving an uncertain load.

14 A. Yes.

15 Q. Does the company buy and sell options?

16 A. Yes.

17 Q. How would the company go about valuing
18 an option that would permit the company to cover
19 the risk of selling uncertain load?

20 A. I'd like to respond to that in two parts
21 because I heard two questions. The first part is
22 how do we go about evaluating the option.

1 Q. Yes.

2 A. The most heavily weighted method as part
3 of these multiple inputs that we would consider is
4 we'd probably call a broker or a bilateral
5 counterparty and say make me an offer. That would
6 be the most heavily weighted input.

7 Now whether or not that option is used
8 to manage the risk of following some type of
9 variable load or price associated with a variable
10 load does not necessarily require us to purchase an
11 option. We may be selling an option, again, for
12 the purposes of making extra money.

13 Q. Are there any other factors that are
14 weighted? You indicated that calling a broker was
15 heavily weighted. Are there other factors that
16 come to mind?

17 A. Oh, yes.

18 Q. And what are some of those?

19 A. The other most important factor I think
20 is what we have in our existing portfolio. We may
21 -- that will determine how much we perceive we
22 need, either the supply to be provided by the

1 option or whether we want to use that in a hedging
2 strategy, or if we want to use it, again, in a way
3 to give ourselves upside potential.

4 Q. How would the company go about deciding
5 whether it's paying too much or too little for an
6 option to cover energy price risk?

7 A. I'm smiling because the answer that
8 comes to my mind, probably the most direct and
9 accurate one, is we probably never know. We
10 probably don't know if we paid too much or paid too
11 little or profited too much or didn't profit
12 enough.

13 Q. I would imagine that it's not a practice
14 of the company to -- well, strike that.

15 Based on your response, I would gather
16 that it's not purely a subjective decision that
17 would be made by a company trader.

18 A. No. I wouldn't categorize it as purely
19 subjective. It's integrative in the mind with all
20 these inputs. In that sense it's integrative.

21 Q. When you use the term "risk management"
22 on page 4, line 14 of your direct testimony, how

1 are you defining that term?

2 A. Risk management is the spectrum of
3 activities that companies or individuals use in
4 order to establish their position on a risk to
5 reward spectrum. In other words, risk management
6 can consist of many activities to lay off certain
7 types of risks, so to speak, or transfer it to
8 other parties who are willing to accept that risk
9 for a price.

10 Q. And I would imagine that in the normal
11 course of business the company utilizes contracts
12 to do just that.

13 A. It utilizes many instruments, most of
14 which have some type of contractual basis, yes.

15 Q. Would a couple of -- would one of those
16 options be a put option contract?

17 A. ComEd has used put options to manage
18 risk.

19 Q. How about call options?

20 A. Yes.

21 Q. How about energy swap arrangements?

22 A. Yes.

1 Q. Would you agree then that one way to
2 manage risk is to purchase options that cover the
3 risk of serving uncertain load?

4 A. Options could be part of the risk
5 management associated with serving load, some of
6 which could be uncertain. There is the issue of
7 financial coverage versus physical supply coverage,
8 but, yes, in general, one could use an option to
9 reduce their exposure to price or supply
10 availability to serving an unknown variable load,
11 yes.

12 Q. Are you familiar with the Monte Carlo
13 simulation?

14 A. Yes, I am.

15 Q. If, for example, the Commission Staff
16 were to perform a Monte Carlo simulation to
17 determine the value of "freed up" power and energy,
18 what would be the specific process that would occur
19 as you understand Monte Carlo simulation?

20 A. Monte Carlo simulation is not a black
21 box into which you put numbers in and you come up
22 with a numeric value for the value of "freed up"

1 energy. It is simply a mathematical methodology
2 which by its very nature is, in fact, a black box
3 on the inside, the inputs being you use typically
4 historical data with probabilities of occurrence,
5 variation in those historical data points
6 statistically, and the correlation of one data
7 input to the other, the output being whatever you
8 structured the machine to generate.

9 My difficulty with much of the
10 discussion around Monte Carlo simulation is my
11 reading shows it to be held up as some type of a
12 mystical model when it, in fact, is a mathematical
13 technique that can be utilized in a variety of
14 models.

15 MR. FEIN: I would move to strike the last
16 portion of the answer that begins with "My
17 difficulty with".

18 MR. REED: Mr. Examiner, I believe that
19 question was responsive -- that answer was
20 responsive to the question as posed. Counsel had
21 asked an open-ended question, and the respondent
22 was simply responding to the question in that

1 manner.

2 MR. FEIN: I agree that it was an open-ended
3 question, but it asked what was the specific
4 process that he envisioned for conducting a Monte
5 Carlo simulation. Then I got an opinion on what he
6 thought of that process.

7 MR. REED: Mr. Examiner, he also explained
8 that it could not be used for the process as
9 delineated by counsel.

10 EXAMINER JONES: Okay. I think we're going to
11 have to have the question read back and also the
12 answer, please.

13 (Whereupon the requested
14 portion of the record was
15 read back by the Court
16 Reporter.)

17 EXAMINER JONES: It's a close call. Given the
18 nature of the subject matter here and the nature of
19 the question, the motion to strike is denied.

20 MR. FEIN:

21 Q. Mr. Leonard, of those inputs that you
22 explained at the front end of your last answer,

1 which of those would be subjective and which would
2 be objective?

3 A. I think the objective inputs would be
4 the actual historical data points and their
5 statistical variants and to perhaps a lesser extent
6 some of the co-variances or correlation amongst the
7 variables. The more and perhaps the more
8 subjective inputs which, in fact, in my opinion,
9 are more significant in determining what comes out
10 of the model, is what data point you choose to
11 start with in the first place.

12 Q. Now I believe you suggest on page 6 of
13 your direct testimony that the Monte Carlo
14 simulation and the proposed MVI method are similar.
15 Is that correct?

16 A. Yes.

17 Q. Does that mean that they are the same?

18 A. No.

19 Q. What are the main differences?

20 A. The main differences is that in a Monte
21 Carlo simulation, in order for it to work as well
22 as it could or should, the historical data streams

1 probably should have many data points so that each
2 data input can be statistically analyzed and you
3 get good estimations of the correlation and the
4 variance of those inputs.

5 Q. Now is it correct that the Monte Carlo
6 simulation is not limited to exclusively historical
7 observations?

8 A. Uh-huh. Yes.

9 Q. Would you also agree that one difference
10 between the proposed MVI methodology and the Monte
11 Carlo simulation is that the Monte Carlo simulation
12 includes consideration of values that are outside
13 of the bounds of historical observation?

14 A. The Monte Carlo simulation could extend
15 to other inputs that the modeler feels are
16 appropriate that could include inputs other than
17 the historical inputs, yes.

18 Q. Referring to page 2 of your surrebuttal
19 testimony, lines 3 through 7, do you know since
20 October 1, 1999, how many customers have migrated
21 back to take service from ComEd?

22 A. No.

1 Q. Do you know at what rate of frequency --
2 I guess strike that.

3 Would you similarly not know at what
4 rate of frequency any customers have migrated back?

5 A. No.

6 Q. No, that's not correct or you also don't
7 know that?

8 A. I'm sorry. I also do not know that.
9 I'm sorry.

10 MR. FEIN: At this time, Mr. Examiner, AES
11 NewEnergy would make an on-the-record data request
12 for that information, specifically the total number
13 of customers, the total megawatts of demand, the
14 percentage of customers, and their percentage of
15 megawatts of demand. I note that this information
16 was previously requested.

17 MR. REED: Mr. Examiner, Commonwealth Edison
18 was served with a data request with regard to that
19 information, and we have to be perfectly honest.
20 We don't know and don't believe that we are capable
21 of obtaining that type of information. There are
22 customers constantly moving back and forth, and the

1 relevancy of that information to this proceeding is
2 suspect at best.

3 MR. FEIN: Well, the relevance is because the
4 witness offers an opinion based upon the fact of
5 customer migration. If they refuse to supply that
6 information, which I know they have in their
7 possession because it needs to be reported to the
8 Commission, then I'd move to strike the question
9 and answer that addresses the issue of customer
10 migration. The company put the issue in play, and
11 I think it's -- I don't know if it's more
12 surprising or disturbing that they would refuse to
13 provide that information.

14 MR. REED: The company simply indicated in its
15 testimony that the possibility existed that that
16 could, in fact, happen. The company did not say
17 with certainty it would, only that it possibly
18 could, and to ask Commonwealth Edison to define a
19 probability is simply impossible to do.

20 MR. FEIN: We're not asking for a probability.

21 MR. REED: The question is --

22 EXAMINER JONES: I'm going to have to

1 interrupt you here. We have too many witnesses
2 today to get into the on-the-record DR business.
3 To the extent that the information has been
4 requested by DRs previously, and perhaps this has,
5 then I guess one option that comes up is motions to
6 compel, for example, and there may be other options
7 or motions available, but I think one option that's
8 really not very feasible at this point is to hear a
9 lot of arguments back and forth regarding a
10 so-called on-the-record DR in the context of this
11 proceeding where we have a lot of witnesses and a
12 lot of cross-examination and a short period of time
13 in which to do it.

14 So I don't have any problem with
15 cross-examination being conducted on this issue.
16 It's in the surrebuttal testimony. I think that's
17 appropriate, but where I'm going to have to draw
18 the line is with debate and argument over
19 on-the-record -- so-called on-the-record DRs.

20 MR. FEIN: At this point then NewEnergy would
21 reserve the right to file a motion to compel and,
22 if so, to file a motion to strike the portion of

1 the testimony that opines on customer migration,
2 and we'll move on with the testimony, the
3 cross-examination.

4 Q. Mr. Leonard, do you know how frequently
5 customers can return to Commonwealth Edison once
6 they're being served by an ARES?

7 A. A customer can return to ComEd in
8 several ways. They can either return to bundled
9 service or they can remain on delivery services and
10 then be served through the power purchase option
11 which may or may not, at the desire of the customer
12 and perhaps the RES, be assigned to the RES. So
13 the RES and the customer has in a sense a free put,
14 if you will, of customers back to PPO assigned or
15 not assigned or back to bundled service.

16 Q. And isn't it also correct that there are
17 certain notice requirements?

18 A. Yes.

19 Q. That are consistent with customers
20 migrating back to ComEd?

21 A. Yes.

22 Q. And are there also any contractual

1 obligations that a customer would have to comply
2 with before they could migrate back to Commonwealth
3 Edison?

4 A. I believe there are requirements in the
5 Rate RCDS and associated tariffs that require
6 customers to then remain on let's say PPO service
7 or bundled service for a period of time, yes.

8 Q. And is it your testimony that it is the
9 Rate RCDS tariff that contains this written notice
10 term or any other terms that would be required?

11 A. That's my understanding where the
12 information is. I do know that we have an electric
13 supplier service group with what are in effect
14 account managers to assist the RESs in meeting
15 notification requirements and those types of
16 issues.

17 Q. And what would your recommendation be to
18 a RES who contacted one of those customer service
19 agents and inquired on a specific portion of a
20 tariff and that customer service agent was unable
21 to provide that reference? What would you
22 recommend to the supplier?

1 A. I would ask to speak to that
2 individual's supervisor until the issue is
3 resolved. If it's an interpretation of law, then
4 it slips out of the business realm and goes to the
5 attorneys to assist.

6 Q. Applying the -- well, strike that.

7 You sitting here today don't have
8 specific knowledge of any specific term or notice
9 provision, and when I say that, a number of days,
10 for example, that would be required.

11 A. Specifically, no. I do know that there
12 are provisions that relate to notification
13 requirements, meter reading dates, a variety of
14 issues, and then there is a term of commitment that
15 can be as much as a year perhaps where a customer,
16 depending if they're on bundled service or PPO, may
17 be required to stay with ComEd.

18 Q. Now assume that historically since
19 October 1st of 1999 that 99.99 percent of the
20 customers and customer load that has been served by
21 an ARES for a single day during that time period
22 ends up being served by the ARES for a full year.

1 Are you with me so far?

2 A. Yes, I am.

3 Q. Would you anticipate that ComEd would
4 have sold its "freed up" power and energy during
5 that one-year period?

6 A. In this hypothetical case, I can't
7 conclude if ComEd would have sold it, would have
8 sold a portion of it. There are too many unknowns.
9 It depends on the type of -- the magnitude of the
10 RES load. It depends on the needs of our control
11 area to assure reliable service in case the RES in
12 that one-tenth of one percent fails to meet demand
13 or perhaps goes belly up and drops the customer
14 load back onto ComEd control area.

15 Q. To your knowledge, have any certified
16 ARES in Illinois gone belly up to date as you used
17 that phrase?

18 A. To my knowledge, no. I do realize that
19 many of them -- excuse me -- that some of them are
20 not particularly active.

21 Q. If history showed, and when I say
22 history, since October 1, 1999, that not a single

1 customer returned, migrated back to Commonwealth
2 Edison's service, would you anticipate that the
3 company would sell that "freed up" power and
4 energy?

5 A. Whether or not we sell the energy
6 depends on many factors. It is not just the
7 unilateral action of the RES but rather the status
8 of our entire portfolio of obligations and
9 resources that are more influential to that
10 decision than the action of the RES.

11 I do want to inject, and perhaps this
12 might get back to the prior discussion, customers
13 of RESs have, in fact, returned to ComEd service.
14 I can't quantify that with a number, but it is a
15 fact that they have.

16 Q. Now I believe in your surrebuttal
17 testimony on page 2, line 14, you testify that
18 there is not necessarily a difference between the
19 cost of serving a known load versus the cost of
20 serving load where the purchaser is able to vary
21 the amount of power and energy taken from hour to
22 hour in a defined range. Is that correct?

1 A. Yes.

2 Q. And would you be familiar with the term
3 block load if I used that to refer to known load?

4 A. I can understand what you're saying.

5 Q. And would you also understand variable
6 load to be load that varies from hour to hour in a
7 defined range?

8 A. Yes.

9 Q. Now when you talk about cost in that
10 passage, are you referring to the ultimate cost in
11 fuel?

12 A. It could be a fuel cost. It could be
13 cost of a contract that we're using to, if you
14 will, back to back our obligation. We purchase a
15 supply contract which has similar characteristics
16 to our sales contract, back to back and move on, so
17 it could be fuel cost, yes; not necessarily though.

18 Q. What are some of the other costs that
19 you had in mind when you used that term?

20 A. Some of the other costs or credits is
21 everything goes back, in my view, to the dynamic
22 nature of ComEd's portfolio at the moment or the

1 RES's portfolio at the moment.

2 RESs have a greater opportunity to
3 structure their portfolio by choosing particular
4 market segments. If, for example, they choose a
5 variable load that goes in one direction and an
6 off- setting variable load in the other direction,
7 those two will cancel out. So that was another
8 concept I had in mind is that by the way we
9 structure our portfolio, a RES or ComEd, you may
10 not incur any costs at all. So there are many
11 factors that come into what I meant there.

12 Q. And when you referred to an offsetting
13 nature of other products that could be purchased,
14 those likely also would have their own costs to
15 them independently. Correct?

16 A. What I had in mind was not other
17 products to purchase but rather other customers to
18 put in my supply portfolio that had the type of, if
19 you will, uncertainty that is, to use my
20 engineering hat for a moment, opposite phase to
21 customer one versus customer two, thereby
22 cancelling out.

1 Q. Now with respect to a block load
2 contract, is the cost of service known at the time
3 of sale?

4 A. No.

5 Q. Would you agree that the cost of service
6 also with respect to a variable load contract is
7 not known at the time of entering into a contract?

8 A. Yes, I would agree with that.

9 Q. Are you familiar with the concept of
10 auto insurance?

11 A. Yes, indeed.

12 Q. Do you own auto insurance for your car?

13 A. Yes, I do.

14 Q. Now when you buy your auto insurance
15 policy from the insurance company, do you and the
16 company know the price of the policy?

17 A. Yes.

18 Q. Do you both know at the time you
19 purchase that policy what the cost of the policy
20 will be over the life of that policy?

21 A. Neither of us know what the cost will be
22 over the life of the policy, neither the seller nor

1 the buyer. For example, depending on how much risk
2 I'm willing to assume, I can change my cost by
3 assuming a larger deductible let's say, or I can
4 change my risk by taking Illinois minimum liability
5 coverage if I feel more risky, or I can take the
6 million dollar umbrella policy if I'm risk adverse.
7 Conversely, what I negotiate with the insurer
8 determines how much risk and reward each of us are
9 willing to take. We ultimately come to an
10 agreement, transfer of risk and transfer of money
11 occurs, and hopefully everyone goes home happy.

12 Q. Isn't it also true that the cost cannot
13 be determined because we won't know what any claims
14 might arise underneath the insurance policy?

15 A. I can bound my cost, as I previously
16 mentioned. The insurance company, because they're
17 in the business of accepting risk generally
18 compared to me who is trying to put risk off, does
19 not necessarily know what their obligations will be
20 under the policy.

21 Q. Someone who is either a bad driver or
22 has bad luck in a car and gets in a number of

1 accidents, makes a number of claims, that's going
2 to affect the cost of claims under a policy if, for
3 example, someone never makes a claim under a
4 policy.

5 A. It may or may not. You know, just
6 because a person has a bad history doesn't mean
7 they'll have an accident, but I think, not to be
8 facetious.

9 Q. Yeah.

10 A. I'm trying to simply say, it depends
11 whatever happens. The person who assumes the risk
12 will have to be responsible for the costs
13 associated with that risk.

14 Q. Now we do know some of the costs
15 associated with an auto insurance policy, such as
16 the agent's commission, up front. Is that correct?

17 A. I'm not an expert in how insurance
18 companies run their compensation. I don't know.

19 Q. And would you agree that some of these
20 unknown costs are estimated through actuarial
21 models?

22 A. I believe insurance companies by

1 necessity need to use actuarial models to bound
2 their risk profiles.

3 Q. And is it also correct that actuarial
4 models look to past experience and also build in
5 certain contingencies usually within a range?

6 A. I've never determined an actuarial model
7 so I just can't answer that question.

8 Q. Did you participate in responding to any
9 of the company's data responses to AES NewEnergy
10 during this reopening portion of the proceeding?

11 A. Yes, sir, I did.

12 Q. Do you recall examples that were asked
13 regarding serving a block load versus a variable
14 load? And specifically it was the company's
15 response to Request No. 2 of the first set of data
16 requests from AES NewEnergy.

17 A. I understand --

18 Q. And if you'd like a copy, I would be
19 more than happy to give you a copy. It looks like
20 counsel has one in his hands.

21 A. I appreciate that, but I recall the
22 general question. I'd like to see the data

1 request, please.

2 MR. REED: Counsel, that was first set No. 2?

3 MR. FEIN: Correct.

4 (Whereupon said document
5 was provided to the witness
6 by Mr. Reed.)

7 A. Thank you.

8 Q. And so let me read the first question
9 and let me get your opinion on this example and ask
10 you whether there's a difference between the cost
11 of providing service to the following two loads:
12 One, 25 megawatts of power and energy around the
13 clock for a month during which the purchaser must
14 take the full 25 megawatts each hour and cannot
15 modify the amount of power and energy scheduled and
16 taken; and then the second would be 25 megawatts of
17 power and energy provided during the very same
18 month during which the purchaser is able to vary
19 the amount of power and energy taken from hour to
20 hour in a range up or down not to exceed 10 percent
21 in a given hour. Is it your testimony that there
22 is no difference between the cost of providing

1 service to those two loads described?

2 A. No, it is not. I stand by my response
3 as submitted, and, if I may, I'll just read it
4 back. "Whether there would be a difference depends
5 on a number of factors, which may include the
6 supplier's and buyer's other sales and purchases in
7 their portfolio and the cost of operating any owned
8 or controlled physical generation." That's the
9 essence of my answer. It goes back to a similar
10 answer I believe I've given throughout this
11 morning. It depends on the situation at the
12 moment, the structure of our supply resources, the
13 structure of our portfolio. The price may be
14 higher, it may be equal, or it may be lower.

15 Q. Is there a standard formula or model
16 that could be used to calculate the differences?

17 A. No.

18 Q. How about a set of assumptions?

19 A. I don't understand how an assumption can
20 calculate the difference.

21 Q. A set of assumptions would not assist in
22 being able to calculate the difference?

1 A. A given set of assumptions in a
2 calculation will determine the output.

3 Q. Now in your direct testimony at page 3,
4 lines 7 to 8, it's something you mentioned on the
5 witness stand earlier. You mentioned the use of
6 the Aztec pyramid purchasing approach.

7 A. Yes, sir.

8 Q. When you refer to the Aztec pyramid
9 approach, are you referring to varying hourly
10 scheduled amounts every few hours?

11 A. The Aztec pyramid is a -- I used it as
12 an example of a generic term which means you can
13 stack up different types of block products to come
14 up with a kind of pyramid shape. Some of the
15 products can be standard products such as the 16
16 hour on-peak product. Other products could be
17 negotiated bilateral products that might have a
18 three or four hour peak piece. That's what I meant
19 by an Aztec pyramid.

20 Q. And that gives you the pyramid shape or
21 the so-called --

22 A. Or wedding cake shape.

1 Q. -- wedding cake.

2 A. Yes, yes, counselor.

3 Q. Would scheduling a flat amount during an
4 entire eight-hour off-peak period be consistent
5 with this Aztec pyramid approach?

6 A. It could be part of the pyramid.

7 Q. And is it your understanding that a
8 retail electric supplier could rely upon imbalance
9 service to shape a wholesale block for the entire
10 eight-hour off-peak weekday period?

11 A. I don't think that would be -- in my
12 opinion, that would not be recommended, would not
13 necessarily be in good faith scheduling practice,
14 and it was my reading of Steve Naumann's memorandum
15 that I referenced that the Aztec pyramid was an
16 example of good faith scheduling and that the
17 reliance on imbalance in lieu of some type of good
18 faith scheduling is probably going to be determined
19 as not good faith scheduling.

20 Q. If this summer the weather is mild, does
21 that mean it will be mild next year?

22 A. No.

1 Q. If the weather has been mild for the
2 past three summers, for example, does it mean that
3 it will be mild the next year?

4 A. No.

5 Q. Turning your attention to page 3 of your
6 surrebuttal testimony, lines 6 through 10, if you
7 could read to yourself that sentence.

8 Is it your contention when you make
9 those statements that the average historical
10 off-peak spot block price of approximately \$13.50
11 per megawatt-hours that's reflected in the current
12 Applicable Period A under the company's MVI
13 proposal produced a reasonable estimate of market
14 value?

15 A. It produces an estimate that is probably
16 as good as any other.

17 Q. Are you aware of whether the company is
18 trading 5 x 8 forward blocks in such a range?

19 MR. REED: Before he answers, is that
20 confidential? I don't want to stray.

21 MR. FEIN: I just asked if he's aware. I
22 don't want him to go into any confidential

1 information.

2 A. I don't know of any specific deals now.
3 However, it wouldn't surprise me that they were.

4 Q. But you have no specific knowledge of
5 that fact as you sit here.

6 A. If I did, I really feel uncomfortable
7 about giving the pricing methodology of our forward
8 products in this hearing. That's really
9 proprietary and confidential.

10 Q. Would you be prepared to answer that
11 question if it was handled in a confidential
12 manner, or is it your testimony that you're just
13 not aware? I don't want you to testify to
14 something that you're not specifically aware of.

15 A. I'm not aware of a specific deal. It
16 wouldn't surprise me if there were.

17 Q. Now at page 2 of your direct testimony
18 you include the statement that your testimony in
19 this proceeding explains why it's not appropriate
20 to include in the market value index methodology
21 the costs associated with a given supplier's risk
22 management practices. Are you familiar with that

1 reference?

2 A. Yes, sir, I am.

3 Q. Is it appropriate for a MVI methodology
4 to be based on wholesale data inputs that no party
5 relies upon?

6 A. It could be appropriate, yes.

7 Q. If the lack of reported day-ahead
8 off-peak spot transactions for an entire week
9 indicated that suppliers didn't rely on a market to
10 serve their -- well, strike that.

11 Would the lack of a reported day-ahead
12 off-peak spot transaction for an entire week
13 indicate that suppliers do not rely on a market to
14 serve their daily load requirements?

15 A. No.

16 Q. Would the lack of reported day-ahead
17 off-peak spot transactions for an entire week
18 indicate that ComEd does not rely on this market to
19 sell "freed up" power and energy?

20 A. Absolutely not.

21 Q. Would reliance on daily spot
22 transactions to serve firm contractual load

1 commitments be speculative?

2 A. It depends how it fits in the context of
3 the supplier's existing portfolio of resources and
4 obligations.

5 Q. So does that mean the possibility exists
6 that it could be speculative based upon those
7 factors that you just identified?

8 A. Any hedging strategy, be it a forward
9 contract or an option, can either be a hedging
10 instrument or a speculation instrument, so yes.

11 Q. To the best of your knowledge, does
12 ComEd rely on daily spot transactions to serve firm
13 contractual load commitments?

14 MR. REED: I've got to object now,
15 Mr. Examiner. We're going into off peak which was
16 already stricken. We've given counsel some
17 latitude, but we're certainly going far afield now.

18 MR. FEIN: It's the last question I had.

19 MR. REED: But that's one question too many.
20 We would strenuously object to that.

21 EXAMINER JONES: Is there any response to the
22 objection?

1 MR. FEIN: Yeah. As I understand, if you're
2 referring to the testimony of NewEnergy that was
3 stricken, it was stricken based upon the company's
4 argument that it was the utility's actual off-peak
5 transactions that were to be provided under the
6 motion that was granted. I'm simply asking the
7 witness whether, in fact, they rely upon the daily
8 spot market, and if it's confidential information,
9 I apologize for asking the question, and we could
10 do it in camera, but it's simply one question on
11 his opinion whether that's a speculative practice.

12 EXAMINER JONES: Any response?

13 MR. REED: Is this the last question on this
14 line?

15 MR. FEIN: Yes.

16 MR. REED: I have no problem with him
17 answering the question.

18 A. ComEd does not speculate. The Energy
19 Trading Group of ComEd is not authorized to
20 speculate. The actions that ComEd takes in the
21 daily off-peak market, intra day market, or the
22 longer term market are for hedging purposes, not

1 for speculation.

2 MR. FEIN: Mr. Examiner, if I could have just
3 a minute, I might be concluded with my cross.

4 EXAMINER JONES: Okay.

5 (Pause in the proceedings.)

6 MR. FEIN: Just one final question.

7 Q. Mr. Leonard, if variable load is not
8 more expensive to serve than a block load, as I
9 believe you answered previously, why are peak
10 prices so much higher?

11 A. My answer previously to the best of my
12 recollection, and it is now in any case, is a
13 variable load may cost more to serve, may be equal
14 in cost, or may cost less to serve. The reason why
15 peak prices are more expensive than off peak or
16 shoulder peak prices is, in general, the cost of
17 production for energy produced at peak is more
18 expensive than in a non-peak period, and as markets
19 continue to evolve competitively, the restructuring
20 and competitive forces keep driving prices at the
21 margin to the cost of production. I think that's
22 the Holy Grail of restructuring here in the state.

1 MR. FEIN: We have no further questions.

2 EXAMINER JONES: Okay. Thank you, Mr. Fein.

3 Mr. Kaminski, did you have any questions
4 for this witness?

5 MR. KAMINSKI: Yes, I have a few.

6 CROSS EXAMINATION

7 BY MR. KAMINSKI:

8 Q. First, is there a price associated with
9 an option?

10 A. Yes, sir.

11 Q. And would you characterize it as a
12 premium?

13 A. I would call it an option premium, yes,
14 sir.

15 Q. And how is that cost recovered?

16 A. Sometimes the cost of an option premium
17 is not recovered. Sometimes the option premium is
18 more than recovered because the market has moved in
19 such a way that that option can be executed at a
20 profit.

21 Q. Now earlier you testified on cross that
22 ComEd uses options on occasion.

1 A. Yes.

2 Q. And in those situations do they use
3 those options to cover price uncertainty for both
4 bundled and unbundled customers?

5 A. Price and load uncertainty, yes, for
6 both bundled and unbundled customers, yes, sir.

7 Q. So the cost of purchasing the option
8 would be recovered from either a bundled customer
9 or an unbundled customer?

10 A. Not necessarily. The cost could come
11 out of shareholder value. One of the reasons why
12 -- in an option hedging strategy, more often than
13 not a purchasing/selling entity may buy an option
14 never expecting to use the option. That is simply
15 the insurance cost. To go back to a comment and a
16 discussion I had about auto insurance, even if I
17 pay for risk transfer of my auto insurance, I sure
18 hope I never have to claim it.

19 Q. Okay. Working off of that, that
20 analogy, you said that you pay the premium for your
21 auto insurance. In the situation where we're
22 dealing with a bundled or unbundled customer, when

1 you purchase an option, don't use that option, are
2 you stating that the shareholders of ComEd absorb
3 that cost?

4 A. It depends on the particular accounting
5 for what happens in the specific case, and I'm not
6 an expert in knowing how regulatory accounting
7 allocates those type of expenditures, but I do know
8 that in at least certain cases the cost of that
9 wholesale transaction that purchased the option and
10 never used it comes out of shareholder value.

11 Q. Okay.

12 You state in your direct testimony --
13 it's page 7 on mine, but I'm not sure if it's the
14 same -- that using more historical data will reduce
15 the chances of significantly understating or
16 overstating the effects of load and price
17 uncertainty. Correct?

18 A. Yes, sir.

19 Q. First, will ComEd apply this 36-month
20 moving average of hourly prices from PJM West to
21 its market value index tariff?

22 A. ComEd is willing to consider to apply in

1 the first case 34 months of market index data
2 because the PJM prices did not become available
3 until April of 1998, so there's kind of this stub
4 period year. It becomes more computationally
5 complicated. It will provide more data points.
6 ComEd does not object to considering that if other
7 parties deem it very appropriate. The incremental
8 benefit, in my opinion, would not be very great.

9 Q. So you're saying that the additional
10 historical data -- sorry. Strike that.

11 How does this additional historical data
12 account for the load and price uncertainty?

13 A. As you have more data points,
14 particularly if you do simulation modeling or
15 averaging or some kind of statistics, the more data
16 points you get, the more likely are the expectation
17 values to reflect future values.

18 That having been said, I'd like to just
19 add a little more. At a certain point you go so
20 far back in history that technological changes,
21 market structure changes make more ancient data
22 less significant as being an estimator for near

1 term future values. It's a balancing act.

2 Q. Thank you.

3 How does this 34 and eventually 36 -month
4 moving average compare with your earlier
5 computations for using PJM West without --

6 A. I think it compares very favorably. The
7 witness who follows me, Mr. Nichols, is much more
8 knowledgeable about the technical details of that,
9 and I request that you question him on that issue.

10 Q. Okay. Going back to the questions I
11 started with, you state that ComEd has the option
12 of going to shareholders or recovering costs of an
13 option from the customers. Correct?

14 A. Oh, I don't think I said that ComEd has
15 the option. I said I'm not specifically
16 knowledgeable about how the regulatory accounting
17 allocates the cost of an option premium between
18 shareholders and customers, but I do know, in fact,
19 that at least some of the time, if not most of the
20 time, that cost is absorbed by shareholders.

21 Q. Would you say that ComEd's ability to
22 absorb these costs is greater than a smaller

1 company's might be?

2 A. I think, in general, the larger the
3 capitalization of a company, the more it is able to
4 absorb losses and the smaller will be its
5 profitability gains in percentage.

6 Q. So, in effect, because of ComEd's size,
7 it would be able to absorb more of these types of
8 costs than a smaller company?

9 A. In general, I believe that to be true.

10 Q. Would this have a negative effect on
11 smaller companies entering the ComEd market to
12 compete?

13 A. Not necessarily.

14 Q. Might it have that effect?

15 A. It could.

16 Q. Okay. One last question.

17 A. Yes, sir.

18 Q. You state that the 36-month rolling
19 average accounts for load and price uncertainty.
20 What specific manner in meeting uncertain load does
21 this method assume?

22 A. We're talking about the PJM price

1 profiling method.

2 Q. Correct.

3 A. The beauty of the method, as proposed by
4 ComEd in its market index methodology, which,
5 again, Mr. Nichols is more of the expert on, is
6 that instead of just looking at monthly or on-peak
7 numbers, it does the actual 8,760 day-by-day
8 hour-by-hour profile of the price and load
9 relationships. It is this expansion to the 8,760
10 in one year and over 24,000 approximately in three
11 years that gets that variation of relationship
12 between price and load, so that's the beauty of the
13 methodology.

14 Q. The question is though, if you're
15 getting these prices and you maintain that this
16 average, this 8,760 average, provides the load and
17 price uncertainty, is that basing that on dealing
18 with load uncertainty with perhaps options over
19 scheduling of power, use of a day-ahead market, or
20 some mix of that?

21 A. The 8,760 deals with the relationship of
22 price and load to determine a price profile. How a

1 supplier or ComEd chooses to serve a particular
2 load in its portfolio at a particular time may
3 include that. I don't understand how the 8,760 is
4 in any way dictating whether someone uses options
5 or owned generation, demand-side management, or
6 some other technique to manage risk in its
7 portfolio.

8 MR. KAMINSKI: Thank you.

9 THE WITNESS: You're welcome, sir.

10 MR. KAMINSKI: That's all I have.

11 EXAMINER JONES: All right. Thank you.

12 Mr. Robertson, did you have any cross?

13 MR. ROBERTSON: I have a couple questions.

14 CROSS EXAMINATION

15 BY MR. ROBERTSON:

16 Q. How are you, Mr. Leonard?

17 A. Fine, sir.

18 Q. Nice to see you again.

19 A. Thank you.

20 Q. At page 7, lines 3 through 4 of your
21 direct testimony, you state that one of the
22 benefits of the market value index methodology is

1 its reliance on objective publicly available data
2 and its transparency. Is that correct?

3 A. Yes, sir.

4 Q. Now would you agree that one of the
5 reasons it's important for data to be publicly
6 available and transparent is so that individuals
7 can have access to market signals?

8 A. That could be one of the reasons, yes.

9 Q. And why would it be important for these
10 individuals to have access to market signals?

11 A. Well, I would believe, because this is
12 my experience what we've done at ComEd in the
13 wholesale market, my experience is the more
14 information an individual or a RES or a supplier
15 has with respect to market pricing, the more likely
16 they will be able to structure an efficient
17 portfolio for their given chosen risk level.

18 Q. So in order -- I noticed in your
19 testimony you talked about exercising options and
20 puts and things like that. In order to do those
21 types of things to protect yourself, it's important
22 for you to have access to pricing data. Is that

1 correct?

2 A. It's important to have access to pricing
3 data. However, it's not absolutely necessary.
4 It's important but not absolutely necessary that
5 that pricing data be public, and, in fact, my
6 experience is most participants who are trying to
7 hedge supply risk do that through a broker
8 bilaterally on a telephone in a private
9 conversation.

10 MR. ROBERTSON: Could you read my question
11 back for me, please?

12 (Whereupon the requested
13 portion of the record was
14 read back by the Court
15 Reporter.)

16 MR. ROBERTSON: Thank you.

17 Q. One of the things I think you mentioned
18 earlier on in your discussion with either Mr. Fein
19 or the Attorney General was that customers or
20 individuals can minimize their exposure to price by
21 reducing demand. Is that correct? I think you
22 mentioned demand management activities.

1 A. Yes, sir.

2 Q. Now would you agree or disagree that in
3 most instances those types of activities are taken
4 by end use retail customers who can reduce their
5 demand for electricity?

6 A. Ultimately the retail customers are the
7 ones who do implement the DSM. However, DSM
8 programs could be aggregated by folks, could be
9 motivated by a RES or the utility themselves, so,
10 yes, eventually the load has to disappear.

11 Q. What are the elements of transparency?

12 A. As I use transparency here, it means
13 that it's available for publics to see.

14 Q. Well, I'm asking a slightly different
15 question, and I've never been quite clear, and
16 maybe there is no answer to it, and I would be
17 willing to accept that if that's your answer, but
18 if I was trying to determine if a price was
19 transparent, what elements, what types of criteria
20 would I look at to determine its transparency?

21 A. That you can find out what it is. For
22 example, I believe trading on the New York Stock

1 Exchange has transparent prices because most
2 publics can see them. It's a very actively traded,
3 transparent-priced market.

4 Q. So would you agree that some prices and
5 some markets have greater transparency than others?
6 For example, you mentioned the New York Stock
7 Exchange. Does that have -- in your mind, is that
8 the most transparent market or are there other
9 markets that are more transparent?

10 A. I would say the New York Stock Exchange
11 is -- I can't think of a more transparent market.

12 Q. Can you think of a less transparent
13 market?

14 A. Yes.

15 Q. What would that be?

16 A. For example, and I'm taking this
17 seriously, but it's a good example. Your
18 negotiations on your \$5 million house would be very
19 not transparent because it's a personal, private
20 deal.

21 Q. Okay. And then we would have degrees in
22 between I take it.

1 A. Yes, sir.

2 Q. Now is the wholesale price of
3 electricity transparent to end use customers in
4 California, in your opinion?

5 A. To a limited extent it is.

6 Q. Is an element of transparency the
7 ability to respond to what you see?

8 A. Transparency, the way I'm using it, the
9 ability to see the prices, is not necessarily
10 linked to what anyone does with that information
11 once they get it.

12 Q. So it's the ability that -- the other
13 half of this would be the ability to respond to the
14 price signal when you see it.

15 A. Yes.

16 Q. And if you can't see it, you can't
17 respond to it. Would you agree with that?

18 A. Not completely because, for example, if
19 you don't have a price that you can see, you can --
20 let's pretend -- let's assume you have a resource
21 to sell. You can put a price out and offer to sell
22 and see if somebody bites.

1 Q. I want to focus on the part of your
2 answer that I think you agree. You agree with me
3 in part then I take it.

4 A. Yes, sir.

5 Q. All right. Let's talk about the part
6 where you agreed with me. Okay?

7 A. Yes, sir.

8 Q. Now if I'm an end use retail customer in
9 California and I don't see the wholesale price and
10 I don't know what it is, can I respond to the fact
11 that the wholesale price increases by 100 times?

12 A. Under that hypothetical construct, no.
13 If you don't see the price, you have no knowledge
14 of the wholesale price, it seems to me you can't
15 respond to it.

16 MR. ROBERTSON: Okay. I have no further
17 questions. Thank you.

18 EXAMINER JONES: Mr. Reed, does the company
19 have any redirect?

20 MR. REED: Just two quick questions,
21 Mr. Examiner.

22

1 REDIRECT EXAMINATION

2 BY MR. REED:

3 Q. Mr. Leonard, do you remember the line of
4 cross-examination of Mr. Fein regarding auto
5 insurance?

6 A. Yes, sir.

7 Q. Okay. Does the choice of the insurance
8 you buy have an impact on the market value of the
9 car?

10 A. No.

11 MR. REED: We have no further questions.

12 EXAMINER JONES: Thank you.

13 Is there any recross?

14 MR. FEIN: No.

15 EXAMINER JONES: There is not.

16 That concludes the questions for

17 Mr. Leonard. Thank you, sir.

18 THE WITNESS: Thank you, Mr. Hearing Examiner.

19 (Witness excused.)

20 EXAMINER JONES: Off the record regarding
21 scheduling.

22 (Whereupon at this point in

1 the proceedings an
2 off-the-record discussion
3 transpired, during which
4 time Ameren Exhibit 7.0,
5 8.0, and 9.0 -P were marked
6 for identification.)

7 EXAMINER JONES: I think we're ready to get
8 back to the next witness.

9 Were there any other scheduling related
10 questions the parties wanted to go over briefly
11 before we do that? I sort of cut you off trying to
12 focus on these two witnesses competing for the same
13 slot there. Is there anything else you wanted to
14 go over now? Okay. I mean obviously we'll have to
15 touch bases from time to time on where we're at
16 here scheduling wise.

17 I believe the next witness then is an
18 Ameren witness. Is that correct?

19 MR. FLYNN: That's correct, and Ameren calls
20 Mr. Eacret.

21 EXAMINER JONES: And this witness has been
22 previously sworn, and this witness remains under

1 oath.

2 MARK EACRET

3 recalled as a witness on behalf of the Ameren
4 Companies, having been previously duly sworn, was
5 examined and testified further as follows:

6 DIRECT EXAMINATION

7 BY MR. FLYNN:

8 Q. Mr. Eacret, did you prepare direct and
9 rebuttal testimony for this reopened proceeding?

10 A. Yes.

11 Q. All right. Your direct testimony has
12 been marked as Ameren Exhibit 7.0 and your rebuttal
13 testimony has been marked as Ameren Exhibit 8.0.
14 Is the information contained and the answers
15 reflected in Ameren Exhibits 7.0 and 8.0 true and
16 correct to the best of your knowledge?

17 A. Yes.

18 Q. And you also prepared a piece of
19 confidential testimony that has been marked as
20 Ameren Exhibit 9.0 and provided to the reporter in
21 a sealed envelope. Is the information contained in
22 and the answers reflected in Ameren Exhibit 9.0

1 true and correct to the best of your knowledge?

2 A. Yes.

3 MR. FLYNN: All right. Ameren moves for the
4 admission into evidence of Ameren Exhibits 7.0,
5 8.0, and 9.0.

6 EXAMINER JONES: Are there any responses to
7 that motion? There are not. Ameren Exhibits 7.0,
8 8.0, and 9.0 are admitted.

9 (Whereupon Ameren Exhibits
10 7.0, 8.0, and 9.0 -P were
11 received into evidence.)

12 MR. FLYNN: Mr. Eacret is available for
13 cross-examination.

14 EXAMINER JONES: 9.0 we will make 9.0 -P as
15 proprietary.

16 MR. FLYNN: Thank you.

17 I would also note that the parties
18 contemplate cross-examination regarding 9.0-P being
19 held in an in camera session.

20 EXAMINER JONES: All right. I think a number
21 of parties have cross-examination questions for
22 this witness. Who would like to start? Mr. Fein.

1 MR. FEIN: Thank you.

2 CROSS EXAMINATION

3 BY MR. FEIN:

4 Q. Good morning, Mr. Eacret.

5 A. Good morning.

6 Q. In your testimony I believe you state
7 that you agree in principle with the concept of an
8 optionality adjustment. Is that correct?

9 A. Yes.

10 Q. Optionality is a term that you are
11 familiar with?

12 A. I don't believe I heard it until this
13 proceeding, but I believe I understand what it
14 refers to in this proceeding.

15 Q. And what is that understanding?

16 A. It is the market value associated with
17 providing energy and power that could vary by hour.

18 Q. And do you understand that the term
19 optionality -- strike that.

20 Are you also familiar with the term
21 optionality as it's used in other markets, whether
22 one is selling equities or some other commodity

1 other than electricity?

2 A. Yes.

3 Q. And is it also correct that the risk
4 presented by uncertainty has a value that can be
5 estimated?

6 A. With varying degrees of precision, yes.

7 Q. And is the degree of precision impacted
8 by one's access to current data?

9 A. I'm sorry.

10 Q. Would that precision that you mentioned
11 be impacted by the degree to which one has access
12 to pertinent data?

13 A. That's probably true, yes.

14 Q. Now there are a number of different
15 methods or optionality models that exist. Is that
16 correct?

17 A. True.

18 Q. Are you familiar with the Black Scholes
19 model for estimating option value and variability?

20 A. Black Scholes?

21 Q. Yes.

22 A. Yes, I'm aware of it.

1 Q. Is it your understanding that this model
2 can account for the risk presented by variable or
3 uncertain loads?

4 A. No.

5 Q. Now I believe you testified during the
6 initial phase of this proceeding that you're also
7 familiar with another method or optionality model
8 referred to as the Monte Carlo simulation?

9 A. A Monte Carlo simulation isn't so much a
10 model as a mathematical technique that could be
11 used to construct a model to simulate uncertain
12 loads at uncertain prices.

13 Q. Are you familiar with any other model or
14 formula or set of calculations which is or can be
15 used to estimate the price differential associated
16 with serving variable loads?

17 A. As I mentioned in my cross-examination
18 the last time I was here, I know there are several
19 consulting firms that have put together their own
20 -- have put their own spin on this problem, and
21 they all have one technique or other they use.

22 Q. You indicate in your testimony that

1 Ameren employs a model for optionality. Is that
2 correct?

3 A. Yes.

4 Q. And you also indicate in your testimony
5 that that was developed at great expense. Is that
6 correct?

7 A. Yes.

8 Q. Do you know how much it cost Ameren, if
9 that is not seeking any proprietary information?

10 A. Honestly, I don't know. I just know how
11 much consultants -- well, I know consultants are
12 expensive. I don't specifically know how much it
13 cost though.

14 Q. You also indicate that there was great
15 effort involved in developing that model.

16 A. Yes.

17 Q. Do you know approximately how many
18 employees at the company were involved?

19 A. Oh, directly involved or do you even
20 want sort of tangentially involved?

21 Q. Why don't you give me both.

22 A. Directly probably half a dozen. By the

1 time it was reviewed and approved by various other
2 folks it could be double that. That's very ballpark
3 though. I don't know specifically.

4 Q. Were any outside consultants or other
5 outside employees or contractors used to assist
6 Ameren in development of such a model?

7 A. They reviewed our work and made comments
8 upon it.

9 Q. You also indicate in your testimony that
10 Ameren's optionality model is highly proprietary.
11 Is that correct?

12 A. Yes.

13 Q. Why is that?

14 A. Well, as we just discussed, we spent a
15 lot of time and effort to develop it, and we feel
16 it gives us a competitive edge in a competitive
17 market so we don't feel that we should be compelled
18 to share it with anyone.

19 Q. I gather then that it would bother you
20 if you were asked to share that with Commonwealth
21 Edison, for example, or Illinois Power Company?

22 A. Yes.

1 Q. If you shared your model with either of
2 those companies, do you think they would use it?

3 A. I don't know. That's what makes a
4 market. They may look at our model and say we've
5 highly over-valued or under-valued that risk, and
6 they would have to make that decision.

7 Q. Now it's also correct that Ameren has
8 deemed this model so confidential that they are not
9 sharing that model with any other parties to this
10 proceeding. Is that correct?

11 A. Yes.

12 Q. This includes the Commission Staff and
13 the Attorney General?

14 A. Yes.

15 Q. You also indicate at the top of page 2
16 of your testimony that you believe that this would
17 have a relatively minor impact?

18 A. Yes.

19 MR. FLYNN: Is this direct?

20 MR. FEIN: Direct testimony.

21 Q. When you use the phrase relatively
22 minor, could you please define what you mean by

1 that?

2 A. I don't know how I can do that without
3 going into more detail on the model other than to
4 say it's just minor. I don't know how to give you
5 any more detail than that.

6 Q. So, in other words, you haven't
7 quantified what you mean by relatively minor for
8 submission into the record either public or
9 confidential in this proceeding.

10 A. No.

11 Q. This information -- no quantification
12 was provided to the Commission Staff, for example.

13 A. No.

14 Q. Not to the Attorney General.

15 A. No.

16 Q. Not to the Hearing Examiner.

17 A. No.

18 Q. And I gather you would also -- well,
19 would you be able to quantify in dollars per
20 megawatt-hour on a confidential basis this impact?

21 MR. FLYNN: If I could ask for a
22 clarification, impact on what?

1 MR. FEIN: The relatively minor impact I guess
2 on the market value.

3 MR. FLYNN: For a given transaction?

4 MR. FEIN: He uses the phrase relatively minor
5 impact, and I guess I'm choosing his words.

6 MR. FLYNN: Okay.

7 MR. FEIN: He uses the phrase market value.

8 A. It would be possible -- our optionality
9 model is part of a broader pricing technique that
10 isn't really compatible with the approach we've
11 taken in the market value index proceedings, so
12 what one would have to do is calculate a market
13 value using our entire market value model or
14 pricing model and then compare that with the value
15 that you would get out of using the MVI techniques
16 that we've discussed in these proceedings.

17 EXAMINER JONES: Ms. Reporter, -- I'm sorry.
18 Go ahead and finish your answer. I didn't mean to
19 cut you off.

20 A. It would be possible.

21 EXAMINER JONES: That's all right. I don't
22 need that read back.

1 Q. On page 2 of your surrebuttal -- no, you
2 called it rebuttal testimony, the question and
3 answer on optionality that begins on line 36.

4 A. I'm sorry. I don't have line numbers on
5 mine.

6 Q. It's under the heading Optionality, the
7 first question and answer.

8 A. Okay.

9 Q. Can you describe what the standard
10 practice at Ameren is in preparing price proposals
11 for the sale of power and energy? If it's not
12 seeking any confidential information, can you just
13 generally explain what process is entailed?

14 A. There would be a customer contact either
15 through an RFP issued by the customer or by a
16 contact through one of our marketers in whatever
17 ways they made the contact where a customer would
18 either ask us for an offer or submit a bid for
19 whatever product it was that they wanted. There
20 would be sort of an initial series of meetings to
21 make sure that we had properly identified the
22 product that the customer was actually requesting.

1 Once that was established that we had a good idea
2 of what that was, we would apply whatever pricing
3 techniques were appropriate for that product.

4 As we've discussed so far today, there
5 are many different types of products, and we have a
6 variety of techniques depending on what that
7 product might be, and we will present a price to
8 the marketer to submit to the customer. That might
9 be very informally, sort of an indicative number
10 that the marketer gives him over the phone, or he
11 might say here's about where we are; is this
12 somewhere an area where we can work. It might be a
13 very formal proposal back to the customer in a
14 written form, and then a process of negotiation
15 begins between the marketer and the customer, and
16 the marketer has support from the pricing group
17 that I'm in as well as upper management, and
18 depending on how far the process goes, it may end
19 up that a mutually agreeable price is determined.

20 Q. Would one of the factors that goes into
21 the pricing of any particular product be any costs
22 associated with price risk to Ameren?

1 A. We don't view it so much as a cost as
2 the market value of the risk that we might be asked
3 to assume in a given transaction, and we would try
4 to quantify what risk is being -- what risk that
5 the customer is asking us to assume in that
6 transaction and what risks that we can pass to the
7 customer, and some of that may be embedded in the
8 price. Other parts of it may be embedded in the
9 contract terms. For instance, we might say that
10 their maximum load could not exceed X or they must
11 maintain minimum load factors, those sorts of
12 things.

13 Q. Is it standard practice, if you know,
14 for an Ameren marketer to accept the price from a
15 buyer if it doesn't cover the cost associated with
16 or the market value associated with the price risk
17 that you just identified?

18 A. Once we give the marketer a price, that
19 price has several different components, and if the
20 price gets shaved through the period of
21 negotiation, it's hard to say what part was shaved.
22 It sort of becomes a whole that becomes difficult

1 to disaggregate, and what part got shaved and what
2 part remained in the price is difficult to
3 quantify.

4 Q. Ameren is in the business of trying to
5 cover its costs when it engages into contracts with
6 customers.

7 A. Certainly.

8 Q. And is there such thing as a risk
9 committee that exists at Ameren?

10 A. Yes.

11 Q. How do you think the risk committee
12 would react if they were told by its traders or
13 marketers that they no longer cared to quantify the
14 risk of serving uncertain load?

15 A. I don't think they would react favorably
16 to that.

17 Q. Do you think they would feel that might
18 be an imprudent decision?

19 A. Is the question that we would no longer
20 quantify?

21 Q. (Nods head up and down.)

22 A. That's probably accurate.

1 MR. FEIN: No further questions.

2 EXAMINER JONES: All right. Thank you,
3 Mr. Fein.

4 I think the Attorney General and IIEC
5 have questions.

6 MR. ROBERTSON: I think the Attorney General
7 asked me to go next, if that's okay with you,
8 Mr. Examiner.

9 EXAMINER JONES: That's fine. Mr. Robertson.

10 CROSS EXAMINATION

11 BY MR. ROBERTSON:

12 Q. Can you refer to page 2 and the top of
13 page 3 of your rebuttal, Exhibit 8.0?

14 A. Yes.

15 Q. Now at that location you make the
16 statement that Ameren would have no objection to
17 the modification of its tariff to provide that
18 another exchange may be substituted where trading
19 volumes become de minimis on an exchange identified
20 in the tariff. Is that correct?

21 A. Yes.

22 Q. Now why would it be -- I take it you

1 believe it would be appropriate to eliminate the
2 use of an exchange with a de minimis trading
3 volume. Is that correct?

4 A. Some data is always useful even if it's
5 de minimis data. If all of the exchanges had
6 de minimis data, that would be a concern, but a
7 collection of data sources, some with very good
8 data, some with minor amounts of data, I don't see
9 a problem with that. You would, of course, always
10 want to verify, look for consistency within the
11 data, and if you saw inconsistencies, you would
12 want to investigate those.

13 Q. Why would it be appropriate in the
14 context of your testimony here? Why did you
15 consider it appropriate to eliminate the exchange
16 with de minimis data?

17 A. Substituted, I believe I use the word.
18 Substituted may have been a poor choice of words
19 there. I would look for other -- as the market
20 evolves and data sources become more or less
21 relevant, I would think it would be prudent to look
22 for the most relevant set of data.

1 Q. What did you mean when you used the term
2 de minimis trading data?

3 A. If we began to see an exchange where
4 there were very, very few transactions listed or
5 bids and offers listed.

6 Q. Would it be more likely that an exchange
7 with a de minimis level of trading would be subject
8 to manipulation?

9 A. No, and if I may clarify that a bit.

10 Q. I'm going to listen to your answer, and
11 then I'll decide whether to strike it.

12 A. All right. I'll wait then.

13 Q. Okay.

14 MR. FLYNN: Move to strike.

15 MR. ROBERTSON: Move to strike. Thank you.

16 I'm sorry. Now I'll get it.

17 I have no further questions.

18 EXAMINER JONES: All right. I believe the
19 Attorney General may or may not have some
20 questions. Mr. Warren?

21 MR. WARREN: Yeah, we just have a couple, Your
22 Honor. I'd like to clarify a couple things, if I

1 could.

2 CROSS EXAMINATION

3 BY MR. WARREN:

4 Q. Good morning, Mr. Eacret.

5 A. Good morning.

6 Q. Referring to your direct testimony, on
7 page 1, the copy I have the lines aren't numbered.
8 This is in response to the question what are your
9 comments regarding optionality.

10 A. Yes.

11 Q. The first sentence you say Ameren agrees
12 in principle with the concept of including a load
13 uncertainty adder in market values.

14 A. Yes.

15 Q. Is that still your testimony today?

16 A. Yes.

17 Q. Would you explain to the Hearing
18 Examiner why you feel that it is appropriate to
19 include a load uncertainty adder into the market
20 value calculation?

21 A. Ameren's view is that the 8,760 method
22 that we are using now for the market value index

1 procedure or technique, whatever, doesn't capture
2 all of the optionality as the term is being used
3 here involved with serving a full requirements type
4 load. It covers some of it, and to the extent that
5 we could find a way to capture that increment, we
6 think that would be prudent to do so, but that
7 increment has to be tempered with the idea that you
8 can only capture it to the extent that it's
9 actually realizable in the market, and so that's
10 why I go on to talk about if our competitors here
11 in the state, as I've mentioned earlier that's what
12 makes a market, if we value that optionality much
13 more than they do, place a higher price on it than
14 they do, then we would demand a higher price for
15 our product and hence we would presume to lose out
16 to most of the offers -- or most of the RFPs that
17 we get involved with them, and from listening, just
18 from reading some of the testimony submitted by
19 some of the other participants to these
20 proceedings, none of the others have mentioned
21 using one either. So that's why we would want to
22 temper that idea that we think it's prudent to

1 capture that increment, but, on the other hand, we
2 need to keep in mind that this is suppose to be an
3 attempt to capture market value, and so we'd want
4 to keep that in mind as well.

5 Q. Yeah, I understand what you're getting
6 at, but what I would like to -- what I would like
7 to try to understand, and I guess we're getting
8 back to what Mr. Fein was alluding to earlier, is
9 your use of the word minor, it has a minor impact.
10 If you're testifying that this is something that
11 should be added in a perfect world apparently, if
12 it could be figured out, it doesn't follow in my
13 mind why that would be considered a minor impact on
14 the market value, and I would appreciate if you
15 could just attempt to explain that again why you
16 think it's minor.

17 A. As I mentioned just a second ago, we
18 think that the existing methodology that we're
19 using captures some of the market value of serving
20 that top portion of the load, so we're talking
21 about an increment there, and that's tempered by
22 what we can actually realize, and, in my opinion

1 anyway, when we look at the broader goal of what
2 we're trying to accomplish through this proceeding
3 is to replace the faulty NFF process with a market
4 value index process, given that it's only an
5 increment -- in our view it's only an increment of
6 the total value anyway, it doesn't seem like that
7 it merits the level of discussion and debate that
8 has gone on here. That's the point I was trying to
9 make.

10 Q. Okay. Would it be fair to say that
11 although you might consider this having a minor
12 impact on the market value, that some other entity
13 or player in the electric industry might not
14 consider it to be a minor impact?

15 A. Minor is certainly a relative term.
16 It's very possible.

17 Q. In that case, would it be fair to say
18 that this other entity that might consider this
19 something other than a minor -- having something
20 other than a minor impact, that that might impact
21 on whether they enter the market in Illinois?

22 A. Again, I go to what is the total market

1 value, and I don't know that an individual -- a
2 potential individual competitor in the market would
3 look so much to see the intricacies of how we
4 calculate an optionality adder.

5 Q. Then it would be your testimony that
6 this optionality adder, if you will, if we can call
7 it that.

8 A. Sure.

9 Q. Would have no impact on competition in
10 Illinois?

11 A. I don't think so.

12 Q. You don't think so. Okay.

13 If I could refer to page 3 of your
14 direct testimony on reopening, you mention Ameren
15 may use -- it begins at the bottom of page 2.
16 "However, this development demonstrates the dynamic
17 nature of the current power trading environment,
18 and Ameren would not object to any affirmation by
19 the Commission that Ameren may use wide-ranging
20 data sources under its MVI tariffs." What do you
21 mean -- I mean -- strike that. What are these
22 wide-ranging data sources that you were referring

1 to in that statement?

2 A. The problem would be that they would
3 almost be impossible to define right now. When we
4 looked back to April of last year when we were
5 beginning this process, Bloomberg and Altrade were
6 being hailed as very vibrant, robust trading
7 platforms by Power Markets Week. By the end of the
8 year Power Markets Week was saying other things
9 about them. So I would think we would want to
10 build enough flexibility into whatever process we
11 create here so that through some mutually agreeable
12 way we could look at these other data resources as
13 they become available and benefit from them.

14 Q. You mentioned some mutually agreeable
15 way. Would you be open to some sort of
16 standardized criteria for determining --

17 A. I think we would have to have some sort
18 of standards, yes.

19 MR. WARREN: Okay. No further questions, Your
20 Honor.

21 EXAMINER JONES: Now Staff has questions. Are
22 all your questions in camera?

1 MR. REVETHIS: They're going to be
2 confidential material, yes, sir.

3 EXAMINER JONES: So you don't have any other
4 than that.

5 MR. REVETHIS: No, sir.

6 EXAMINER JONES: Okay.

7 MR. WARREN: And for the record, Your Honor,
8 we may have some confidentiality type questions.

9 MR. FEIN: And I didn't mean to exclude the AG
10 from that before.

11 EXAMINER JONES: All right. Off the record
12 regarding scheduling.

13 (Whereupon at this point in
14 the proceedings an
15 off-the-record discussion
16 transpired.)

17 EXAMINER JONES: All right. Back on the
18 record.

19 There was an off-the-record discussion
20 regarding I guess the status of the schedule, and I
21 believe what will happen next is that we will see
22 if there is any redirect examination of Mr. Eacret

1 with respect to the cross-examination that has
2 occurred so far which was done in part of the
3 public record.

4 MR. FLYNN: We have no redirect.

5 EXAMINER JONES: Okay. All right.

6 Off the record then regarding
7 scheduling.

8 (Whereupon at this point in
9 the proceedings an
10 off-the-record discussion
11 transpired.)

12 EXAMINER JONES: All right. Back on record.

13 We hereby break for lunch until 1:15.

14 (Whereupon lunch recess was
15 taken until 1:15 p.m.)

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1 A F T E R N O O N S E S S I O N

2 EXAMINER JONES: Back on the record.

3 We're still on the public record.

4 Mr. Eacret is still on the stand. We hereby go in
5 camera for purposes of some cross-examination.

6 (Whereupon the following
7 pages 163 through
8 178 are contained under
9 separate cover for the in
10 camera portion of the
11 proceedings.)

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1 EXAMINER JONES: Off the record.

2 (Whereupon at this point in
3 the proceedings an
4 off-the-record discussion
5 transpired.)

6 EXAMINER JONES: All right. Back on the
7 record.

8 As the parties are aware, there was some
9 in camera cross-examination of Mr. Eacret that was
10 conducted by Commission Staff counsel.

11 At the request of the counsel for
12 Commission Staff, Ameren agreed to provide a late
13 exhibit to be marked as Ameren Exhibit 9.1 -P, as in
14 proprietary. As you can probably tell from the
15 identification, that exhibit is intended to be
16 proprietary and will be furnished to those parties
17 that are to receive it at all on an in-hand date of
18 Friday, March 2nd.

19 All right. I believe the next witness
20 is Mr. Nichols, a ComEd witness. Is that still the
21 parties' proposal?

22 MR. REED: Yes.

1 EXAMINER JONES: All right. Mr. Nichols has
2 been previously sworn, so you may go right ahead.

3 MR. REED: Thank you, Mr. Examiner.

4 Commonwealth Edison will now present its
5 second and final witness in this reopened
6 proceeding, Mr. David E. Nichols.

7 DAVID E. NICHOLS
8 recalled as a witness on behalf of Commonwealth
9 Edison Company, having been previously duly sworn,
10 was examined and testified further as follows:

11 DIRECT EXAMINATION

12 BY REED:

13 Q. Mr. Nichols, would you please state your
14 name, spelling your last name for the record?

15 THE WITNESS:

16 A. David E. Nichols, N-I-C-H-O-L-S.

17 Q. And by whom are you employed?

18 A. Commonwealth Edison.

19 Q. What is your position with Commonwealth
20 Edison?

21 A. My position is a -- I'm a Principal
22 Analyst in ComEd's Finance Group.

1 Q. You should have before you three
2 documents. The first has been designated the
3 Direct Testimony of David E. Nichols on Reopening
4 marked by the Court Reporter as Commonwealth Edison
5 Exhibit 13.0 consisting of four pages of text in
6 question and answer form. Was this document
7 prepared by you or under your direction?

8 A. Yes, it was.

9 Q. Do you have any changes, additions, or
10 deletions that you would like to make to this
11 document?

12 A. No, I do not.

13 Q. If I were to ask you the same questions
14 today as contained in this document, would your
15 answers be the same?

16 A. Yes.

17 Q. Does this document constitute your
18 direct testimony in this reopened proceeding?

19 A. Yes.

20 Q. You also have before you two additional
21 documents, the first entitled Confidential and
22 Proprietary Surrebuttal Testimony of David E.

1 Nichols and marked by the Court Reporter as
2 Commonwealth Edison Exhibit 14.0 -P as in Peter.
3 This document consists of seven pages of text in
4 question and answer form. Was this document
5 prepared by you or under your direction?

6 A. Yes, it was.

7 Q. Are there any changes, additions, or
8 modifications that you'd like to make to this
9 document?

10 A. No.

11 Q. If I were to ask you the same questions
12 as contained in this document today, would your
13 answers be the same?

14 A. Yes.

15 Q. This document on page 7 has information
16 that has been deemed confidential and proprietary
17 by Commonwealth Edison. Is that correct?

18 A. Yes.

19 Q. You also have before you the final
20 document designated the Redacted Surrebuttal
21 Testimony of David E. Nichols on Reopening
22 designated as Commonwealth Edison Exhibit 14.0.

1 Was this document prepared by you or under your
2 direction?

3 A. Yes.

4 Q. Are there any changes, additions, or
5 deletions which you would like to make to this
6 document?

7 A. No.

8 Q. And is it also true that this document
9 consists of seven pages of text in question and
10 answer form?

11 A. Yes.

12 Q. If I were to ask you the questions
13 contained in this document today, would your
14 answers be the same?

15 A. Yes.

16 MR. REED: We now move for the admission of
17 Commonwealth Edison Exhibit 13.0, 14.0, and 14.0-P
18 for admission into the record. We would ask that
19 Commonwealth Edison Exhibit 14.0 -P be given
20 proprietary and confidential treatment and be
21 admitted into the record as such, and we tender the
22 witness for cross-examination in this proceeding.

1 EXAMINER JONES: Any response to that motion?
2 There is not. Let the record show that ComEd
3 Exhibits 13.0, 14.0, and 14.0 -P as in proprietary
4 are admitted into the evidentiary record.

5 (Whereupon ComEd Exhibits
6 13.0, 14.0, and 14.0 -P were
7 received into evidence.)

8 EXAMINER JONES: I believe there are some
9 parties with cross-examination questions for
10 Mr. Nichols. Who would like to begin? Mr. Fein.

11 MR. FEIN: Thank you.

12 CROSS EXAMINATION

13 BY MR. FEIN:

14 Q. Good afternoon, Mr. Nichols.

15 A. Good afternoon.

16 Q. If you could please turn to page 2 of
17 your surrebuttal testimony at line 16. When you
18 state that although all markets, both forward and
19 spot, are currently going through a slow period,
20 what do you mean by the phrase slow period?

21 A. We basically looked at some volumes for
22 the month of December, and they looked kind of --

1 lower than normal.

2 Q. And that would be December 2000?

3 A. Yes.

4 Q. So when you referred to slow period, you
5 were solely limiting that to the December time
6 period?

7 A. The December time period was the basis
8 for saying slow. November did not show the exact
9 same kind of characteristics.

10 Q. By that do you mean that December was a
11 little slower than November?

12 A. Yes, I do.

13 Q. And in particular with respect to off -
14 peak spot prices, what do you mean by the phrase
15 slow period?

16 A. I don't think I said off -peak prices in
17 this fashion. I did not look at volumes of
18 off-peak prices.

19 Q. You did not?

20 A. Did not.

21 Q. Are you the familiar with what has
22 happened in off-peak spot prices in December of

1 2000?

2 MR. REED: I'd like to object, Mr. Examiner.

3 This witness did not testify to any off-peak
4 matters to the best of my knowledge.

5 MR. FEIN: Well, he offered -- he testifies on
6 what's going on in the markets. The last I checked
7 that's still a market. He opines on what's been
8 going on. I think it goes directly to the
9 statement that he has included in his testimony.
10 I'm just trying to understand what it is he
11 reviewed or is aware of where he came to this
12 opinion about the slow period.

13 MR. REED: Mr. Examiner, I'm not going to
14 belabor the record with a lot of argument. The
15 testimony is what it is, and Mr. Nichols has
16 previously explained what he meant by that term,
17 and we don't think it's proper to try and get in
18 through the back door what's not allowed in through
19 the front door, and I leave it at that.

20 EXAMINER JONES: Which testimony are you
21 referring to specifically, Mr. Fein?

22 MR. FEIN: Lines 16 through 19 on page 2 where

1 he discusses what's going on currently in the
2 market.

3 EXAMINER JONES: Are you referring to trading
4 activity?

5 MR. FEIN: Yes.

6 EXAMINER JONES: The volume of trading
7 activity in your question? Is that what you're
8 referring to?

9 MR. FEIN: Yes.

10 EXAMINER JONES: Could I have that question
11 back, please?

12 (Whereupon the requested
13 portion of the record was
14 read back by the Court
15 Reporter.)

16 EXAMINER JONES: All right. I'll allow the
17 question at this point. I think it is a question
18 that is related to the -- directly to the testimony
19 on page 2. Now whether further questions in the
20 line remain related I do not know, but I think the
21 question as asked is proper.

22 THE WITNESS: Could I hear the question back

1 now?

2 (Whereupon the requested
3 portion of the record was
4 read back by the Court
5 Reporter.)

6 EXAMINER JONES: Let me back up a minute.
7 Your question goes to volume of trading activity or
8 to prices?

9 MR. FEIN: Well, the first question was the
10 volume, and I intended to ask a second question if
11 he knows what happened with prices.

12 EXAMINER JONES: But the question I just heard
13 was with respect to prices. I didn't recall
14 hearing that term when I heard the question read
15 back before, and perhaps I just didn't hear the
16 entire question.

17 The question that was just read back
18 appears to go directly to prices as opposed to
19 volume of trading activity. I have not really
20 heard a response to the objection that would
21 justify at least at this point getting into
22 specific -- into prices with this witness, so the

1 objection is sustained. You certainly have leave
2 to pursue your line of questioning in other
3 respects.

4 MR. FEIN: So I can understand Mr. Examiner's
5 ruling, am I forbidden to ask any questions of the
6 witness's knowledge of what's happened with
7 off-peak prices?

8 EXAMINER JONES: Mr. Fein, I just ruled on the
9 question that was on the table. The response was
10 that the question went to volume of trading
11 activity, but when I reheard the question it went
12 beyond that, as I understand the question. Based
13 on the arguments that I heard and the response to
14 the objection that the question was intended to go
15 to trading activity, I did not really feel that
16 that response was sufficient to overcome that
17 objection, so the ruling goes to the question that
18 was asked and also, as explained in the response,
19 to the objection.

20 MR. FEIN: Okay.

21 EXAMINER JONES: And I'll deal with any
22 further objections to further questions if there

1 are any.

2 MR. FEIN: Then to the original question, I'll
3 reask it.

4 Q. Are you familiar with what has happened
5 to the volume of off-peak transactions in recent
6 months in the company's service territory?

7 A. No. I see no volume data on off-peak
8 transactions.

9 Q. I'm sorry. You see no?

10 A. I do not see volume data for off-peak
11 transactions.

12 Q. When you say you do not see it, it means
13 in the course of your employment you don't review
14 that type of information.

15 A. That's correct.

16 Q. And for purposes of testifying here you
17 didn't -- you don't review that type of
18 information.

19 A. I do not know the actual volume data for
20 off peak.

21 Q. Do you know whether the company is still
22 relying upon Power Markets Week for calculation of

1 off-peak market value?

2 A. In our methodology we have stated we
3 have Power Markets Week and that we will use that
4 as a calculation, yes.

5 Q. There has been no change in that part of
6 the proposal.

7 A. No, we have not made any change.

8 Q. Are you aware that there is no off-peak
9 activity for the Into ComEd spot market for the
10 entire reporting period of November 13 through 17?

11 A. There's no activity? I'm not aware that
12 there was no activity.

13 Q. That no transactions were reported in
14 Power Markets Week?

15 A. There may have been no transactions
16 reported, but that does not equate to activity.

17 Q. But you're still relying on what's
18 reported in Power Markets Week as part of your
19 proposal. Correct?

20 A. That's correct.

21 Q. Let me just make sure I understand the
22 proposal, and correct me if I state something wrong

1 here. Would you agree with me that the off -peak
2 methodology is based on the premise that the
3 average historical day-ahead off-peak spot
4 transactions is reflective of off -peak forward
5 transactions?

6 A. Yes.

7 Q. And also that historical average spot
8 off-peak prices serve as a good proxy for future
9 forward off-peak prices?

10 A. It serves as a proxy for our
11 methodology.

12 Q. Now under the current Rider PPO, is the
13 company presently selling power to retail electric
14 suppliers?

15 A. I guess I'm not sure I understand the
16 question. I thought PPO sold power to customers.

17 Q. Isn't there a component of the currently
18 effective PPO tariff whereby power is being sold to
19 retail electric suppliers? I believe it has been
20 referred to as FRP service.

21 MR. REED: Mr. Examiner, I'm going to have to
22 object to this line of questioning on the basis of

1 relevance. Mr. Nichols has not testified as to the
2 Rider PPO or what's contained therein. Clearly, to
3 the extent that Mr. Fein or AES want to delve into
4 that matter, I believe that's a document that was
5 filed with the Commission. They had an opportunity
6 to address that matter then. I simply don't see
7 the relevance to this line of questioning. Not
8 belaboring the record, but it's clearly beyond the
9 scope of this witness's testimony.

10 MR. FEIN: This witness is being offered as a
11 witness supporting their methodology, the exchanges
12 used, what has transpired in the market, portions
13 of what's contained in the MVI calculation, whether
14 there should be any further review of the data
15 sources that go into their tariff, you know. He
16 opines on certain proposed modifications to the
17 tariff on the methodology. He takes issue with
18 NewEnergy's witnesses' characterization of the MVI
19 methodology, and, you know, he goes through how the
20 methodology works.

21 MR. REED: In a brief response, Mr. Examiner,
22 this is not a proceeding addressing the general

1 methodology of the market value index tariff. We
2 went through that during phase one. The purpose of
3 this proceeding, a very limited reopening, is to
4 address certain issues as deemed proper by the
5 Commission. That is beyond the scope of what
6 counsel is asking the witness.

7 MR. FEIN: I mean specifically, the questions
8 that I -- the line of questioning that I'm now
9 seeking to ask has to do with data that goes into
10 the methodology which the witness discusses.

11 MR. REED: Then why the question about the
12 PPO? It's not referenced in here anyway. If he
13 wants to ask a specific question, he can certainly
14 do so, but Rider PPO is not on the table in this
15 proceeding, to the best of my knowledge.

16 EXAMINER JONES: Mr. Fein, I guess I'm having
17 some trouble seeing how this is linked to the
18 reopen issues, this particular line of questioning.

19 MR. FEIN: Well, the particular line of
20 questioning is to draw a distinction upon the
21 values that are currently included in the tariff
22 for calculation of the off-peak power and energy

1 based upon the current rates, and I'm trying to
2 draw a distinction showing how there is another
3 provision in this tariff that affords the company
4 -- afforded retail electric suppliers the ability
5 to purchase power directly from Commonwealth
6 Edison, and I'm merely trying to bring out what is
7 embedded in the methodology that as I understand it
8 is still on the table.

9 EXAMINER JONES: Objection sustained. I guess
10 I just cannot see the link between this line of
11 questioning and the issues on reopening, at least
12 based on what I've heard so far.

13 MR. FEIN: Well, let me go into another line
14 of questioning.

15 Q. Given the foundation of the company's
16 proposal for the off-peak period, is it correct
17 that the price should be identical to the average
18 off- peak block price incorporated in the current
19 index?

20 A. I kind of lost that. Could you repeat
21 that?

22 Q. Well, let me ask it this way. Do you

1 know what the current off-peak price that's
2 contained in the company's index is sitting here
3 today for Applicable Period A?

4 A. We have multiple prices. You know, the
5 prices that come out are peak, off-peak, summer,
6 non-summer, and by customer class.

7 Q. Would you agree that the off-peak price
8 is approximately about \$13.50 per megawatt-hour?

9 A. The underlying off-peak price that we
10 developed the methodology?

11 Q. Yes.

12 A. It's approximately in that range. I
13 don't know exactly.

14 Q. And so I understand the proposal, that
15 is suppose to be based on historical figures.
16 Correct?

17 A. That would have been calculated on the
18 previous twelve months' data that we had.

19 Q. And do you believe that that number
20 would be reflective for use going forward as in
21 when you reset the market values at the conclusion
22 of this proceeding?

1 A. When we reset the market values, they
2 will be updated to take in the last twelve months.
3 We will not use the same data.

4 Q. So, in other words, the number may or
5 may not be different than what's currently
6 included.

7 A. It's like someone else said. It's like
8 a forecast. We're pretty certain that it won't be
9 exactly identical to what it is. It will be
10 reflective of what the market prices actually were
11 seen for the last twelve months.

12 Q. If I were to tell you here today that
13 NewEnergy is prepared to purchase 200 megawatts of
14 5 x 8 off-peak power and energy at that \$13.50
15 megawatt price, would you be able to accept that
16 offer?

17 A. I can't accept wholesale offers.

18 Q. Would you agree to pass that along to
19 the appropriate person?

20 A. I don't think Commonwealth Edison sells
21 wholesale power anymore.

22 Q. Would that be an affiliated company that

1 now does that?

2 A. Yes.

3 Q. On page 5 of your surrebuttal testimony,
4 line 4, you discuss what the company's methodology
5 starts with.

6 A. Uh-huh.

7 Q. How old is the off-peak data that's
8 incorporated in the methodology?

9 A. Whenever we take our snapshot, we take
10 it from the preceding twelve months.

11 Q. And that snapshot is taken when?

12 A. The snapshot will -- well, we have to
13 file our next data April 1st. That snapshot will
14 include February back through March, you know, of
15 the previous year, so it will be February of 2001
16 through March of 2000.

17 Q. On line 14 on this same page of your
18 testimony, is the 3 percent figure that you cite
19 your view of the premium for covering the risks
20 associated with serving load that is uncertain?

21 A. The 3 percent is the difference between
22 the two calculations we made at the time using two

1 different methodologies.

2 EXAMINER JONES: I'm sorry. Could I have the
3 cite again that you were referring to?

4 MR. FEIN: Yes; page 5, line 14.

5 EXAMINER JONES: Thank you.

6 Q. So that number is to reflect just the
7 difference in the calculations, if I understand
8 your answer?

9 A. Well, the actual 3 percent was done as a
10 calculation difference. The methodology, you know,
11 is what it is.

12 Q. And what is it that you believe the 3
13 percent reflects?

14 A. Well, we think it reflects the fact that
15 there is a correlation between price and load and
16 there's a lot of variability, and as you try to go
17 out and capture the variability, the 3 percent is
18 basically giving a higher weight to those times
19 where prices are higher at the same time loads are
20 higher.

21 Q. On page 2 of your surrebuttal testimony
22 on line 18, when you use the phrase "credit

1 concerns" what do you mean?

2 A. Could you repeat the line again?

3 Q. Line 18, page 2.

4 A. In its entirety, that discusses talking
5 about volumes and when people are trading on the
6 forward markets or the current markets, and in
7 talking to traders what we had the impression was
8 is that sometimes prices get so high that it can
9 curtail people's ability to go out and trade
10 because they can go beyond their trading limits.

11 Q. I'm sorry. I couldn't hear the last
12 portion of your answer.

13 A. You know, traders may not be pulled back
14 a little bit from trading because they can exceed
15 some trading, you know, some trading limits, some
16 volume type dollar numbers, discussions with the
17 people in the trading side.

18 Q. So that's what you meant when you used
19 the phrase credit concerns?

20 A. I meant, right, that there may be a
21 curtailment in volume because of those kind of
22 dollar limits and the fact that, you know, if you

1 have a credit policy that says, you know, I can
2 trade so much, you may not be able to take, you
3 know, too many trades at that, you know, and not
4 exceed that.

5 Q. Do you know how Commonwealth Edison
6 addresses credit concerns?

7 A. That was a better question for Larry.
8 I'm not --

9 Q. You don't know that.

10 A. No.

11 Q. And do you similarly not know whether
12 bonds or parental guarantees are used?

13 A. I'm not in the -- I have not been in the
14 wholesale market area. I don't know exactly what
15 they do.

16 Q. Do you know with respect to the -- do
17 you have any knowledge with respect to how the
18 issue of credit was handled with the FRP service?

19 A. To be honest, I'm not sure exactly what
20 the FRP service is.

21 Q. You're not familiar with that portion of
22 your tariff?

1 A. It's an acronym I'm just not connected
2 with.

3 Q. Okay.

4 On page 3 of your surrebuttal testimony
5 where you discuss the issue of periodic reviews,
6 your answer that begins on line 16, and
7 specifically your choice of the words "compelling
8 circumstances" on line 20, you didn't define that
9 term, did you?

10 A. No, I did not define that term.

11 Q. Would the changes that have occurred in
12 the markets in the month of December that you
13 testified about previously, would any of those
14 developments be considered a compelling
15 circumstance as you use that phrase that would
16 justify reviewing the methodologies employed by the
17 company?

18 A. No, I don't think so.

19 Q. Did you have in mind a percentage
20 increase in prices that would be a compelling
21 circumstance that would warrant further review of
22 the methodologies proposed?

1 A. Of prices, no.

2 Q. So you didn't have in mind any either
3 price or volume parameters shall we say in mind
4 when you chose the phrase "compelling
5 circumstances"?

6 A. What I have here I think is that the
7 Commission will define compelling circumstance.

8 Q. At page 4 of your testimony, your
9 surrebuttal testimony, lines 4 through 8, you do
10 opine regarding NewEnergy's proposal. Do you see
11 that reference? It begins on line 4.

12 A. Yes, I do.

13 Q. And are you aware of the conclusions
14 that were reached in the proposed order that was
15 issued in this case regarding potential
16 modification to the company's proposal?

17 A. It's my understanding that we were given
18 an option to take one or the other.

19 Q. And do you understand why the
20 modification was accepted to change the data
21 hierarchy in the company's proposal?

22 A. I know the reasons stated. I'm not sure

1 if I understand why it was accepted.

2 Q. Have you read that provision of the
3 proposed order?

4 A. I said I read the reasons stated, but I
5 don't necessarily agree with them.

6 Q. Do you understand that the proposal that
7 NewEnergy made was that by the use of offers, it
8 was a way to limit the ability to potentially
9 manipulate the proposal?

10 A. Well, I --

11 Q. I didn't ask if you agreed with it. I
12 asked if you understand what the proposal was.

13 A. The proposal was that, yes, that we only
14 use offers and ignore the bids if no transactions
15 were available.

16 Q. Do you know whether, if not provided
17 with that option, the company would have rejected
18 market value index and reverted back to the neutral
19 fact finder?

20 A. That's a policy decision that goes up
21 far higher than I.

22 Q. And you're not aware of any discussion

1 regarding that?

2 A. As far as I have never heard anyone
3 state that they would do that.

4 Q. Would you agree that all else being
5 equal, the Into ComEd market is less likely to
6 develop if the company uses the Into Cinergy market
7 rather than the Into ComEd market for its MVI
8 tariff?

9 A. Well, that's an opinion on my part, but
10 I think that's kind of a stretch. I don't think we
11 have a whole lot of assurance that it was going to
12 develop one way or the other.

13 Q. Now if you could turn to page 4 of your
14 surrebuttal testimony, the answer beginning on line
15 18, where you indicate that Mr. Somers' testimony
16 is based on the incorrect assumption that ComEd is
17 using the Zuraski adjustment, do you see that?

18 A. Uh-huh.

19 Q. And there has been a lot of discussion
20 over this issue over the past few months. Is that
21 a fair statement in the testimony and otherwise?

22 A. I'll agree with that one.

1 Q. I'm going to try to clarify that once
2 and for all hopefully.

3 Now do you understand that when
4 NewEnergy discusses the Zuraski adjustment, what
5 they're referring to is a mathematical calculation
6 that simply looks at individual hours to the
7 average hour?

8 A. I think you need to clarify that.

9 Q. In other words, the development of
10 hourly price ratios and hourly load ratios is
11 what's entailed in that adjustment?

12 A. Well, I guess I know what I see as the
13 Zuraski adjustment because we applied it to our NFF
14 numbers previously, so I mean to my own way of
15 thinking I have the -- you know, we have used it,
16 and so that's what I understand as the Zuraski
17 adjustment.

18 Q. But do you understand that -- you have
19 stated that you have performed some other
20 calculation, not the Zuraski adjustment, contrary
21 to what NewEnergy's witnesses have said. Is that
22 what I understand your testimony to say?

1 A. Right. I think everybody had the
2 Zuraski adjustment and applied it to their NFF
3 values.

4 Q. We agree with you. I'm trying to
5 explain. NewEnergy, by saying that the
6 mathematical calculation that was performed -- do
7 you understand that the testimony said that it
8 arrived at the same number?

9 A. Yeah. I think in the previous part we
10 looked at the same calculation, and we arrived at
11 the conclusion that they were doing it wrong.

12 Q. Let me know if you think this would be a
13 workable solution to this issue. Would the company
14 be prepared to provide NewEnergy with its entire
15 8,760 hour calculation for any rate class that it
16 desires and then allow them to perform this
17 calculation?

18 A. I don't think that's a problem.

19 Q. And would the company be prepared to sit
20 down with NewEnergy side by side and make these
21 calculations and try to resolve this, which I think
22 is not a big discrepancy?

1 A. Resolve?

2 Q. So that you can both sit down and make
3 the same calculation with the same numbers so that
4 the two parties can talk about the same data, the
5 same calculation, to resolve this issue?

6 A. I don't see a problem.

7 Q. Would you characterize the calculation
8 that the company has provided as an enhancement of
9 the Zuraski adjustment?

10 A. Yes, I do.

11 Q. And is the reason why you believe it's
12 an enhancement was that it was expanded to include
13 the 8,760 methodology?

14 A. It's an enhancement because by including
15 the 8,760 methodology we captured more of the price
16 and load uncertainty.

17 Q. And are there any other differences that
18 you're aware of other than that enhancement?

19 A. Between the Zuraski adjustment, no.

20 Q. At the bottom of page 5 of your
21 surrebuttal, the sentence beginning with the words
22 "But included in each price", it carries over to

1 the next page.

2 A. Okay.

3 Q. Do you see that sentence?

4 A. Yes.

5 Q. Would it be correct to say that, in
6 another way, that it's your opinion that the
7 company's methodology includes in its calculation a
8 range of possibilities for both load and prices?

9 A. I think that's the essence of that
10 sentence.

11 Q. And in that range of possibilities is
12 there an assumed maximum price, for example?

13 A. You don't know the assumed price and the
14 maximum price until you've done the calculations.
15 At some point there is a computed high price.

16 Q. Similarly, there's a computed high load
17 that would be in the range of possibilities.

18 A. The loads really weren't computed, but.

19 Q. So, in other words, when you discuss --
20 so this was simply talking about price.

21 A. The whole essence here is to try to come
22 up with an equivalent price.

1 Q. Within that -- strike that.

2 And it is also possible that the actual
3 maximum hourly price could exceed the range of the
4 -- could exceed the assumed maximum hourly price.

5 A. I guess I need that repeated because I
6 didn't follow it.

7 Q. Okay. It is possible that when the
8 calculation is made, you come up with an assumed
9 maximum price you believe will occur. It is
10 possible that the actual price could exceed that.

11 A. Oh, as you go forward in time, the
12 actual as they occur.

13 Q. Correct.

14 A. That is possible.

15 Q. I believe that you testify on page 6 of
16 your surrebuttal testimony that you believe the MVI
17 methodology results in rates that are just and
18 reasonable. Is that correct?

19 A. Yes.

20 Q. Now you also discuss on that page use of
21 PJM data. Do you see that?

22 A. Have you got a line?

1 Q. At the bottom of the page, the last
2 question and answer.

3 A. Oh, okay. Yes, there's PJM in the
4 question.

5 Q. And is it my understanding then that --
6 are you familiar with the PJM market?

7 A. Somewhat familiar with it.

8 Q. Do you know whether the PJM market
9 incorporates a price cap?

10 A. I believe currently they have a price
11 cap.

12 Q. And is that -- strike that.

13 Would there be an impact under the
14 company's methodology if there were no price cap
15 and prices, for example, -- there was a PJM hourly
16 price of say \$8,000 per megawatt-hour?

17 A. Well, actually, we looked at the PJM
18 data. They never hit their price cap, so to say
19 that it's 8,000 doesn't make sense since it never
20 hit the \$1,000 number that's the current price cap.

21 Q. The current price cap is what?

22 A. Well, at least this is my knowledge from

1 about a year ago was about \$1,000.

2 Q. And you haven't looked into that further
3 since about a year ago?

4 A. Well, we did most of the analysis for
5 our methodology.

6 Q. Would the existence of a price cap or
7 not have any impact on the calculation of the
8 market value under the current methodology as
9 proposed? I'm sorry. Let me rephrase that.

10 Would the existence of a price cap in
11 PJM have any impact whatsoever on the calculation
12 under the proposal methodology?

13 A. Well, I think I just said that since it
14 didn't hit the price cap, the price cap really did
15 not become effective. I mean there was no
16 limitation put on by the price cap, so if there was
17 none, it would not have changed it.

18 Q. And would your answer be the same over
19 the course of the past three years, as I understand
20 the proposal to use three years of data?

21 A. I have no knowledge of the PJM prices
22 ever hitting their cap.

1 Q. Is there a price cap in the wholesale
2 market for Commonwealth Edison?

3 A. No. We have no market.

4 Q. Does the company support the use of
5 price caps, if you know?

6 A. That's not -- outside my area.

7 Q. At the top of page 6 of your surrebuttal
8 testimony, if I understand your discussion of the
9 Monte Carlo simulation, do I understand that
10 sentence to mean that it's your understanding that
11 the Monte Carlo simulations often result in the
12 mean as the end result?

13 A. Most every time I've used the Monte
14 Carlo simulation, the primary result was to come up
15 with a mean value and also the distribution around
16 it.

17 Q. Is it your -- do you mean to say that
18 then the kind of real world result is often a mean
19 value that is derived when using the Monte Carlo
20 simulation?

21 A. The Monte Carlo simulations are used for
22 many, many things. We've heard this morning that

1 they are just basically a technique, to use that.
2 It gives you many answers, sums them up and then
3 averages them. I've seen many times the mean value
4 as being the ultimate result from a Monte Carlo
5 simulation that is used.

6 Q. And how many times have you seen the
7 Monte Carlo simulation used in your experience?

8 A. I've run a couple of them.

9 Q. And without delving into anything of a
10 confidential nature, can you explain the purpose
11 for conducting the Monte Carlo simulation?

12 A. It's almost always when you have a very
13 highly uncertain variable that you don't know its
14 interaction with other uncertain variables, and
15 then I mean that's kind of what the whole thing is
16 about. I mean you really end up with a model, and
17 then the Monte Carlo part is just an iteration
18 after iteration of the same model and changing the
19 variables.

20 Q. And the purpose that you ran that was
21 for what?

22 A. In some cases, you know, you have

1 trouble modeling related and sometimes related
2 variables together. I mean this is just a
3 technique that allows you to put -- you know, in my
4 case, we were looking at failure rates of different
5 things.

6 Q. I'm sorry. Value rates?

7 A. Failure rates.

8 Q. Failure rates.

9 A. It has nothing to do with wholesale
10 pricing. So I mean it's a methodology that people
11 use to get more insight into what's happening when
12 you don't understand or you have trouble
13 correlating some parameters.

14 Q. At the bottom of that page where you
15 refer to the question regarding the three years of
16 PJM data, if you could turn back to there, lines 21
17 through 23.

18 A. Yes.

19 Q. Have you read NewEnergy witness Somers'
20 testimony?

21 A. Yes, I did.

22 Q. And do you understand that NewEnergy no

1 longer supports the use of three years of PJM data?

2 A. I know Mr. Somers stated that.

3 Q. Has there been any changes in the volume
4 of the off-peak spot market afforded to PJM in
5 recent months as well?

6 A. I've never seen any PJM off-peak
7 volumes.

8 Q. Do you have any cause for concern to use
9 data that goes even further back than the most
10 recent twelve-month period, based upon changes in
11 the marketplace in recent months?

12 A. Do I have cause for concern? I'm not
13 sure why you would, you know, take more and more
14 historical data from a price standpoint. Are you
15 referring to what the -- using the data from the
16 PJM?

17 Q. Correct.

18 A. The whole point there was to get at, you
19 know, a better look at the distribution of what's
20 actually happening, you know. It really ends up
21 being ratios, you know. Levels aren't as
22 significant. It's basically what's changing, and

1 it also gives you a better idea of some of the
2 correlation between uncertain loads and uncertain
3 prices.

4 Q. So I understand, do you believe that any
5 recent changes that you've testified about in the
6 markets give you any cause for concern to use, you
7 know, the three years of data that's been suggested
8 or simply staying with the one year of data? Do
9 you think that would be an improvement or does it
10 not factor in?

11 A. Well, we know adding three years is
12 going to be administratively more difficult to do.
13 You know, we could go either way on it. If people
14 thought there was value to three years, that's
15 fine. We'll do three years.

16 MR. FEIN: I have nothing further at this
17 time. I may have one question that I would like to
18 ask in camera, but I'll wait to see whether I'm
19 going to ask that based on the rest of the cross.

20 EXAMINER JONES: All right. Are there other
21 parties who have cross for Mr. Nichols?

22 MR. KAMINSKI: Yes.

1 EXAMINER JONES: Let's take a ten-minute
2 break.

3 (Whereupon a short recess
4 was taken.)

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1 (Whereupon the proceedings
2 were hereinafter
3 stenographically reported by
4 Carla Boehl.)

5 EXAMINER JONES: I think we are ready to
6 resume. I believe there are a couple other parties
7 who have some questions for Mr. Nichols. Who would
8 like the honors first?

9 MR. KAMINSKI: I will take it.

10 CROSS EXAMINATION

11 BY MR. KAMINSKI:

12 Q. Mr. Nichols, on page 2 of your direct, I
13 don't have the exact line but it's the end of the
14 first full answer, it says, "The viability and
15 appropriateness of sources of market information
16 utilized under ComEd's MVI methodology will be
17 reviewed periodically and changes will be proposed
18 to the ICC Staff." What do you mean by -- how will
19 you check for the viability and appropriateness of
20 those sources?

21 A. Well, we have been monitoring. I mean,
22 they are just going to look to see that the data

1 shows up, that they are covering the periods that
2 they are trying to cover. Basically, it's kind of
3 an ongoing monitoring to see if there is any new
4 efficiencies that would affect our methodology.

5 Q. Will you be listening for proposals from
6 other parties about new data sources in your
7 monitoring efforts?

8 A. I think Commonwealth Edison has always
9 listened to people outside of it.

10 Q. And does ComEd have any standardized
11 criteria for considering these new data sources?

12 A. We have not developed any standardized
13 criteria.

14 Q. Is ComEd willing to agree to a set of
15 standardized procedures for the evaluation and
16 selection of these new data sources?

17 A. I think that's somewhat premature. I
18 think there is a lot of dynamics in the market and
19 I think it's going to be really hard to really
20 define real strong standardized guidelines for
21 that.

22 Q. Are there any guidelines that you would

1 think that should be standardized in these
2 procedures for determining new data resources?

3 A. Well, I think the ones that we typically
4 look at, that we would make sure that they are
5 covering the market that we want to cover, that we
6 can gather the data. Those are some of the
7 important guidelines that we would review.

8 Q. Moving onto page 4 of your surrebuttal,
9 about mid-page it says, "For example, if an
10 optionality adjustment were ordered, ComEd would
11 have to change its use of the 8760 hour prices and
12 possibly go back to the Zuraski Adjustment to avoid
13 double counting the effects of load uncertainty"?

14 A. Yes.

15 Q. How would changing to the 8760 method --
16 from the 8760 method to the Zuraski Adjustment
17 avoid double counting?

18 A. Well, we have been -- the 8760 method
19 already basically increases the prices to account
20 for any uncertainty in the distribution of prices.

21 Q. How does it do that?

22 A. In the methodology, you know, we are

1 basically lining up the loads and prices and
2 basically multiplying those two so that there is a
3 much heavier weight given to those hours where the
4 loads are high and the prices are high. And that
5 happens because of the natural correlation between
6 the two. I mean, if they were totally independent,
7 it would not seem to matter. But we do see
8 correlation. And so by giving that kind of a
9 weighting it will increase an average above a
10 simple average.

11 Q. What is the difference between the 8760
12 hour methodology versus the Zuraski Adjustment as
13 far as the results you get?

14 A. As far as the results, when we first
15 went to propose the 8760 we did calculations at one
16 of our customer classes and we saw about the three
17 percent change that I reference someplace else in
18 my testimony.

19 Q. Yes, page 4 of your surrebuttal. Just
20 one question on that. Regarding the earlier quote
21 I asked -- I'm sorry, it's at page 5 -- but
22 regarding the earlier quote on page 4, when you say

1 you would possibly go back to the Zuraski
2 Adjustment to avoid double counting, on page 5 you
3 refer to the customer cost equivalent increase, the
4 8760 methodology increasing the final equivalent
5 customer cost by more than three percent compared
6 to even the enhanced Zuraski Adjustment. Are we
7 talking about two different things here?

8 A. The original Zuraski Adjustment was
9 applied to the MVI. I put this in quotes as
10 enhanced Zuraski Adjustment because when we started
11 our workshops on this particular -- I guess it
12 isn't, maybe it wasn't the old 259 docket -- we had
13 proposed enhancing that by using customer class
14 load shapes which had a weekday shape, a weekend
15 shape, and a peak shape for each month. So instead
16 of just having an average over the entire summer,
17 we were going to break it apart. It showed more
18 variability in loads when we do the weighting. So
19 that's what I meant by this enhanced Zuraski
20 Adjustment. It probably is not known by that in
21 any other context.

22 Q. Just for the earlier language on page 4

1 where you say that ComEd would have to change its
2 use of the 8760 and possibly go back to the Zuraski
3 Adjustment, there you are referring to the enhanced
4 Zuraski Adjustment that you are talking about now?

5 A. It would probably make sense just to go
6 back to the original Zuraski Adjustment.

7 Q. So the difference between the 8760
8 methodology and the enhanced Zuraski Adjustment is
9 approximately three percent?

10 A. Yes.

11 Q. What is the difference between the 8760
12 methodology and the Zuraski Adjustment that you
13 talk about on page 4?

14 A. We never calculated that.

15 Q. Would it be more than three percent?

16 A. I had better hear that back again. I
17 thought we were going from the original Zuraski to
18 the enhanced Zuraski.

19 Q. No, from the original Zuraski which you
20 refer to on page 4 to the 8760?

21 A. I would expect it to be more than three
22 percent then.

1 Q. Now, you said you were confused about
2 going from one to the other. Do you know the
3 difference between the 8760 and the original
4 Zuraski?

5 A. No. We only made the computation in the
6 workshop between what I have called the enhanced
7 and the 8760.

8 Q. Now, you also state that -- well, you
9 state on page 4 that if you were to use an
10 optionality adjustment to the 8760 hour prices,
11 that would result in double counting, correct?

12 A. Yes.

13 Q. But by going back to the Zuraski
14 Adjustment you would avoid double counting?

15 A. The Zuraski Adjustment was meant to
16 capture the effects of just the inter-day price
17 shaping versus block loads, and so it had basically
18 averaged in just those inter-day price shapes. So
19 I feel that it did not include, you know, any
20 uncertainty in load and price.

21 Q. So considering the statement you made
22 here, could you say that the difference between the

1 8760 hourly price and the original Zuraski
2 Adjustment would be the load uncertainty that you
3 say the 8760 methodology takes into account?

4 A. Yes.

5 Q. That load uncertainty, what manner of
6 meeting uncertain load does it assume? What
7 technique?

8 A. The load uncertainty that we are using
9 is to drive at getting an equivalent price. It is
10 not driving at meeting a particular load. You
11 know, we are trying to come up with a composite
12 price that's a rate adjustment price. There is
13 only four prices that we can come up with and they
14 each use one CTC value. I mean, it is not -- it's
15 an equivalent type price for hourly to our rates.

16 Q. Well, on page 7 of your direct testimony
17 you say that this 8760 --

18 A. I'm sorry?

19 Q. On page 7 of your direct.

20 A. Of the surrebuttal?

21 Q. No, the direct. I'm sorry about that.
22 That is -- strike that.

1 MR. KAMINSKI: No more questions.

2 EXAMINER JONES: All right. Mr. Robertson, do
3 you still have some?

4 MR. ROBERTSON: Yes, sir.

5 CROSS EXAMINATION

6 BY MR. ROBERTSON:

7 Q. Good afternoon, Mr. Nichols.

8 A. Good afternoon.

9 Q. I hope we are not together as long as we
10 were the last time we did this.

11 A. Amen.

12 Q. Would you look at ComEd Exhibit 13, your
13 direct testimony?

14 A. Uh-huh.

15 Q. Page 2, line 7?

16 A. Okay.

17 Q. Now, let me ask you this question first.

18 How do you define "market participant" in the
19 context of your testimony here?

20 A. Market participants are basically buyers
21 and sellers of electricity.

22 Q. Would you consider the typical electric

1 retail customer in Illinois to be a market
2 participant?

3 A. They are market participants.

4 Q. Now, on page 4 of your direct testimony,
5 Exhibit 8, you state that the ability to make hard
6 copy snapshots of screen data without violating any
7 copyright constraints will be another variable in
8 evaluating the benefits of using any other market
9 source, is that correct?

10 A. Yes.

11 Q. Why is it important to be able to
12 receive hard copy snapshots of screen prints?

13 A. Because our methodology makes that data
14 available for audit.

15 Q. Now, it's my understanding that for
16 auditing purposes only the Illinois Commerce
17 Commission Staff would have access to the
18 Altrade-Bloomberg screen prints, is that correct?

19 A. That's how we conducted our audits.

20 Q. Is it true that, as with the Altrade and
21 Bloomberg exchanges, ComEd cannot guarantee that
22 the Staff or the Commission or typical electric

1 consumers would be able to obtain power-priced data
2 from any of the other electronic exchanges
3 identified in your testimony?

4 A. It's my understanding that those are all
5 private entities and we cannot guarantee any of
6 that.

7 Q. So the answer to my question is yes?

8 A. I think we are in agreement, but I am
9 not sure if the question was written to say yes or
10 no.

11 Q. All right. Would you agree that if
12 power-priced data from these types of sources is
13 not available to retail electric customers and the
14 Staff of the Commission, it is not available to the
15 public generally?

16 A. The prices on the actual exchanges
17 themselves?

18 Q. Yes, the power-priced data you just
19 discussed, we were discussing, yes.

20 A. I agree with that.

21 Q. Is it correct that the ability of retail
22 customers, the Staff and the Commission to obtain

1 this data is an issue that ComEd would consider
2 prior to changing sources for data collection in
3 its MVI methodology?

4 A. I mean, I think that's -- again, we
5 can't guarantee anything more than what's already
6 out there. If it was more available, we would see
7 that as a potential benefit.

8 Q. Why would that be a benefit?

9 A. A sarcastic answer, you would stop
10 asking these questions.

11 Q. That doesn't count. I'm sorry. But I
12 like the answer.

13 (Laughter)

14 A. To be honest, I'm not sure of the
15 practicality of it, if it really gives any more
16 benefit except basically it will make the other
17 participants feel better about it.

18 Q. It would add confidence to the process?

19 A. Confidence is a good word.

20 Q. You and I ought to get together before
21 this. Maybe we could work this out. Do you have a
22 copy of Request Number 16 in IIEC's first data

1 request to the Company?

2 MS. READ: On reopening?

3 Q. On reopening, yes. If you don't, I do.

4 (Whereupon said document
5 was provided to the parties
6 by Mr. Robertson.)

7 Q. Now, do you have a copy before you?

8 A. Yes, that you have given me.

9 Q. And just so it's clear in the record, I
10 have asked the reporter to mark this as IIEC Cross
11 Exhibit 1 On Reopening, ComEd witness Nichols. And
12 this is IIEC's first set of data request, Request
13 Number 16 dated February 12, 2001, is that correct?
14 And the Company's response to that data request?

15 A. Yes.

16 Q. Would you look it over and tell me
17 whether or not -- I want to introduce it as an
18 exhibit, so if you have got a disagreement with it,
19 take a minute and look at it.

20 A. Okay.

21 Q. Does that appear to be a true and
22 correct copy of the data request and the Company's

1 response to that request?

2 A. Yes, it is.

3 Q. And that relates to your testimony at
4 page 2 where you state, quote, Electronic exchanges
5 continue to provide the best available means of
6 collecting market data due primarily to the
7 transparent nature of the prices, is that correct?

8 A. Yes.

9 Q. And you were asked in the context of
10 this request to provide certain information with
11 regard to that statement?

12 A. Yes.

13 MR. ROBERTSON: I would move the admission of
14 IIEC Cross Exhibit 1.

15 MR. REED: I would only note -- and we have no
16 fundamental objection to that. However, the
17 document as tendered by Mr. Robertson refers back
18 to Request Number 41 and Response A. I think for
19 completion of the record if we are going to admit
20 this document, we should also admit the document
21 that is referenced therein.

22 MR. ROBERTSON: I think that's confidential.

1 It's confidential workpapers.

2 MR. REED: No, I am not talking about the
3 workpapers.

4 MR. ROBERTSON: That's what the response is.

5 MR. REED: 41?

6 MR. ROBERTSON: Workpapers. Well, if you want
7 the response to be complete, we can put --

8 MR. REED: I am not asking you to divulge
9 whatever it is you are going to do. I am trying to
10 ask a straight-forward question.

11 MR. ROBERTSON: And I am trying to give a
12 straight-forward response.

13 MR. REED: We have no objection. Let it in.

14 MR. ROBERTSON: Just so the record is clear,
15 Mr. Examiner, the response to Question 41 was
16 identified by the Company as confidential
17 workpapers in another data response that it refers
18 back to. I can put it in if they want the record
19 complete. If they don't, I won't put it in.

20 MR. REED: I think we have already stated that
21 we have no objection to the admittance of the
22 document tendered by Mr. Robertson and would ask

1 that he move along.

2 EXAMINER JONES: Any response from others? All
3 right, there are not. Let the record show IIEC
4 Cross Examination Exhibit Number 1 On Reopening is
5 admitted.

6 (Whereupon IIEC Cross
7 Examination Exhibit Number 1
8 On Reopening was admitted
9 into evidence.)

10 MR. ROBERTSON:

11 Q. Okay. Mr. Nichols, could you please
12 look at page 3 of Exhibit 8.0, your direct
13 testimony, at lines 7 and 8?

14 MR. REED: 13.

15 Q. I'm sorry, 13. There you testified that
16 the Altrade Exchange showed growth during most of
17 the year in electricity trading including activity
18 from Into ComEd trading, the Into ComEd trading
19 hub, is that correct?

20 A. Yes.

21 Q. Is it true that you were not able to
22 quantify the growth in electricity trading

1 referenced in your testimony at this location?

2 A. We do not have any volume data for all
3 of Altrade.

4 Q. And its growth in volume that you are
5 talking about here in your testimony?

6 A. We are talking about trading volume.

7 Q. And is it true that you did not know if
8 there was a decline in trading activity for any
9 part of the year referenced in your testimony here?

10 A. A decline, it's my understanding that
11 the markets are kind of up and down. I don't think
12 -- from what I have seen, you do see some months
13 that are less than months before that and then will
14 go back up.

15 Q. Do you have a copy of your response to
16 IIEC's first set of data requests, Request Number
17 4?

18 MS. READ: This is again on reopening, Eric?

19 Q. On reopening, yes. I'm sorry, Sarah.
20 But any data request I am referring to is all on
21 reopening.

22 A. Yes, I have Number 4 here now.

1 Q. You were asked in regard to your
2 testimony at page 3, lines 7 and 8, to state
3 whether there was a decline in activity on the
4 Altrade Exchange during any part of the year
5 referenced. And the response given was ComEd does
6 not know whether there was a decline in activity on
7 the Altrade Exchange during the part of your
8 reference, is that correct?

9 A. That was the response.

10 Q. Now, is it correct that you did not know
11 whether there was a net increase in trading on the
12 Altrade Exchange for the year in question?

13 A. On a total basis we do not know what's
14 trading on Altrade.

15 Q. Now, is it correct that you did not know
16 which entities increased their trading on Altrade
17 during the year referenced in your testimony?

18 A. No, we do not know who would have
19 increased trading.

20 Q. Now, is it correct that the minimum
21 trading block on the Altrade Exchange is 50
22 megawatts?

1 A. I believe it's the eastern markets that
2 is 50 megawatts.

3 Q. I'm sorry?

4 A. Eastern markets are 50 megawatts.

5 Q. What's the significance? We have the
6 eastern market, the western market.

7 A. I think they post the western markets to
8 California, too, which is like a 25 -megawatt
9 standard contract.

10 Q. For the purpose of this proceeding and
11 for the purpose of your proposal we are dealing
12 with the eastern market?

13 A. Yes.

14 Q. So under your proposal the minimum
15 trading block size on the Altrade Exchange would be
16 50 megawatts?

17 A. That's correct.

18 Q. Now, if the 50 -megawatt forward
19 transaction is entered into for one month , how many
20 megawatt hours would that represent?

21 A. It depends on the number of peak days in
22 the month.

1 Q. For the month of March 2000?

2 A. I need a calendar. I have to make sure
3 there would be no off-peak days. Basically, it is
4 like 20 days times 16 times 50. But there is going
5 to be other number of days.

6 Q. 20 times 16 times 50?

7 A. That would be the number of megawatt
8 hours that would have been transacted.

9 Q. What's the definition of peak day under
10 ComEd's tariffs?

11 A. Under ComEd's tariffs?

12 Q. Uh-huh.

13 A. They are defined basically Monday
14 through Friday with exceptions.

15 Q. Is there a difference between the peak
16 day in ComEd's tariffs and the peak day used for
17 wholesale transaction?

18 A. I believe the exceptions are different.
19 I think I have to qualify, too, if you are -- the
20 number of hours in ComEd's peak definition is
21 different than the wholesale number of hours in its
22 definition, I think, every day.

1 Q. In the formula you gave me is that the
2 wholesale number?

3 A. That's the wholesale number.

4 Q. What are the wholesale definitions of
5 peak days for ComEd?

6 A. I don't think ComEd --

7 Q. You said there were different peak days
8 in ComEd's tariffs definition?

9 A. Our retail tariffs do not -- they have a
10 13-hour peak period.

11 Q. And my question to you is for wholesale
12 transactions what do you consider to be a peak day
13 on the ComEd system?

14 A. Monday through Friday with whatever the
15 wholesale exceptions are.

16 Q. You don't know what those wholesale
17 exceptions are?

18 A. I know Christmas is one but there is
19 like five or six of them.

20 Q. Exceptions would be holidays?

21 A. Yes.

22 Q. And the other exceptions would be a

1 standard exceptions, if you will, would be the
2 weekends, right?

3 A. Well, Monday through Friday, yes, is
4 what I have --

5 Q. Now, I want to come back to the
6 workpaper we were discussing awhile ago but I don't
7 want to do that now because I would like to save it
8 for the end of the cross because it may require us
9 to go into in camera. But would you turn to your
10 surrebuttal testimony, Exhibit 14, page 2?

11 A. Uh-huh.

12 Q. Now, in the first question and answer on
13 that page you state your disagreement with Dr.
14 Bowyer's use of the term "markets" in reference to
15 the Altrade-Bloomberg. She calls them markets; you
16 call them exchanges, is that correct?

17 A. That's correct.

18 Q. Now, are the markets that Dr. Bowyer
19 refers to in her testimony and for which you
20 criticize her -- strike that. Now, would you agree
21 that in the case of Altrade there is apparently an
22 eastern market and a western market?

1 A. I don't think that has to do with
2 Altrade. Altrade is just set up as an electronic
3 exchange to trade the various markets. The markets
4 basically are determined on themselves.

5 Q. Okay. So there is a -- would you agree
6 there is an eastern market and a western market
7 then?

8 A. Actually, there are eastern markets and
9 western markets. I think what we have been using
10 is also what they call trading hubs. So from a
11 reliability standpoint they talk about the eastern
12 market and the western market. From the trading
13 standpoint there is many hubs.

14 Q. So each hub would be a market?

15 A. It can be defined as a market.

16 Q. And would you also -- if I am correct,
17 is there a forward market? In fact, you reference
18 the forwards market in your next answer?

19 A. Yeah. I mean, generally speaking people
20 talk about forward markets to identify specific
21 transaction contracts.

22 Q. Is there a spot market?

1 A. People also trade contracts which are
2 much more temporal. If I go into PJM, I have a
3 very defined spot market. I can go to a central
4 clearing area. If I go into Cinergy and ComEd, I
5 am dependent upon ComEd actually setting up
6 contracts between each other bilaterally.

7 Q. In fact, at line 16 of your testimony
8 here you reference the forwards market and a spot
9 market, is that correct?

10 A. Yes.

11 Q. So is it true to say that we have
12 different kinds of markets based on types of
13 products sold and geographic areas involved?

14 A. You have different trading markets.

15 Q. Do all the electronic exchanges measure
16 or observe, whatever term you prefer or some other
17 term you prefer, the prices in all these markets?

18 A. No, I think we know that because ComEd
19 isn't represented in all exchanges.

20 Q. Does the Altrade or Bloomberg exchange
21 measure the forwards market, the spot market,
22 different types of markets or just one type of

1 market?

2 A. I am more familiar with the forward
3 market. I actually thought they had spots, too,
4 but I haven't been involved with that.

5 Q. Now, if you look at page 2, line 14 to
6 15, would you -- in your question that you put to
7 yourself, you say, "On page 2 of her testimony Dr.
8 Bowyer expresses concern that there is a lack of
9 transparency liquidity in the forwards market. Do
10 you share this concern?" Is that the question
11 that's there?

12 A. That's the question.

13 Q. Now, can you tell me where on page 2 or
14 even on page 1 Dr. Bowyer uses the term "forwards
15 market"?

16 A. I don't think I brought Ms. --

17 Q. I have it.

18 (Whereupon said document
19 was provided to the witness
20 by Mr. Reed.)

21 A. On page 1 of her testimony she basically
22 references Commonwealth Edison's MVI methodology

1 and data use from Altrade and Bloomberg in
2 calculation of the MVI, and then goes on on page 2,
3 lines 26 to 27, and they talk about liquidity
4 problems with that. I guess I was taking the
5 inference we are dealing with forward markets, and
6 she references the same forward markets in her
7 calculation, that she was talking about the forward
8 markets.

9 Q. So to the extent that she references
10 Altrade and Bloomberg she is referencing the
11 forward market in your mind then, is that correct?

12 A. She also says that in the NR MVI
13 methodologies which we only use the forward markets
14 from Altrade and Bloomberg for that.

15 Q. Now, is it a fair reading of Dr.
16 Bowyer's testimony to say that she's talking about
17 the lack of volume and liquidity in the Altrade and
18 Bloomberg forward markets?

19 A. It was in her testimony that she calls
20 them forward markets, yes.

21 Q. As opposed to forward markets generally?

22 A. Yes.

1 Q. Now, would you go to page 4 of your
2 rebuttal or surrebuttal testimony, ComEd Exhibit
3 14. Now, you state there that ComEd agrees that
4 the Commission has the ability to propose changes
5 to the tariffs if compelling circumstances warrant
6 such a change.

7 A. Could you give me a line?

8 Q. Hang on, because I think Mr. Fein asked
9 you the same question about the same thing. Try
10 page 3, line 20. If I could type better at night
11 --

12 (Laughter)

13 Q. Do you have that?

14 A. Yes, I have that.

15 Q. All right. Now, I notice that you use
16 the word "propose" instead of a word like
17 "institute" or "compel" or "direct." Was there a
18 reason for that?

19 A. I am not a lawyer. I just use the words
20 that I normally would use.

21 Q. So you don't know whether or not the
22 Commission can do more than propose a change to a

1 subject tariff, is that correct?

2 A. Is this when my lawyers are supposed to
3 help me. Isn't this legal argument?

4 MR. REED: After such a riveting question, I
5 have no idea what is being asked. Could we have
6 the question reread, please, Mr. Examiner, if you
7 don't mind?

8 EXAMINER JONES: Sure, do you need it read
9 back?

10 MR. REED: Yes, please.

11 EXAMINER JONES: Ms. Reporter, would you read
12 that back, please.

13 (Whereupon the requested
14 portion was then read back
15 by the Reporter.)

16 A. I am not certain what they are capable
17 of doing.

18 Q. Can other parties propose changes?

19 A. Other parties can always propose
20 changes.

21 Q. Can the changes be implemented if ComEd
22 doesn't agree to them?

1 A. I don't think other parties can force
2 ComEd to accept changes.

3 Q. Can the changes be implemented if ComEd
4 doesn't agree to them but the Commission does?

5 MR. REED: I will have to object now. It
6 calls for a legal conclusion. The Commission can
7 do whatever it is statutorily authorized to do.

8 MR. ROBERTSON: Well, this witness has stated
9 that it's ComEd's policy that the Commission has
10 the ability to propose changes to the tariffs. I
11 didn't put it in his testimony. He did. I think I
12 am entitled to inquire about what his understanding
13 is of the Commission's authority.

14 EXAMINER JONES: I think that's appropriate
15 cross on the testimony appearing in the witness'
16 surrebuttal.

17 A. It would be my understanding that the
18 Commission can propose it and our lawyers would
19 tell us if we would object to it or not.

20 Q. So from a legal standpoint you don't
21 know whether or not the ability to propose a
22 change, and you didn't intend to imply here, that

1 the ability to propose a change was equivalent to
2 the ability to require implementation of a change
3 in the tariff, is that correct?

4 A. It was not my intention to imply that.

5 Q. I will leave you alone there. Now, I
6 would like to go back to the questions that I
7 wanted to raise about the workpaper and I am not
8 sure how ComEd wants to handle this because the
9 workpaper is confidential.

10 MS. READ: Well, if it's confidential,
11 questions can't be asked on it in open session if
12 they would reveal confidential information. If you
13 simply want to mark it into the record --

14 MR. ROBERTSON: Why don't I do this? I can
15 have it marked into the record but I have some
16 questions about what the different columns mean as
17 opposed to what are the totals or what are the
18 numbers. Maybe we can do those without violating
19 any confidentiality so the record is clear and the
20 exhibit can be --

21 MS. READ: Well, Eric, other than you, I think
22 only Staff and the AG got that particular exhibit.

1 So we would have, I think, problems not knowing
2 where you are going with you trying to describe and
3 talk about it in public session.

4 MR. ROBERTSON: That's fine. Okay. I don't
5 know if anybody else has got cross. I think I was
6 the last one. But rather than run the risk of
7 violating a confidentiality, this might be an
8 appropriate point to go in camera.

9 EXAMINER JONES: Just let me make one comment.
10 I don't have any problem with the parties doing
11 that but also don't have any problem with providing
12 counsel for IIEC and ComEd an opportunity to look
13 that material over first to see if there really is
14 a problem with it going into the public record. I
15 mean, I do need to note as I have previously in
16 this case that it is important that no more
17 material is marked confidential than needs to be.
18 It not only shields it from other parties but it
19 also means that it cannot appear in a public
20 proposed order, it cannot appear in a Commission
21 order, it cannot be discussed by the Commission at
22 a public session, etc. So it is important that the

1 proprietary designations be as limited as much as
2 they possibly can. Having said that, do you want
3 an opportunity among yourselves for a couple
4 minutes to take a look?

5 MR. REED: I think that would be beneficial,
6 Mr. Examiner.

7 (Whereupon the hearing was
8 in a short recess at which
9 time IIEC Cross Examination
10 Exhibit 1 On Reopening and
11 IIEC Cross Examination 2
12 Confidential On Reopening
13 was marked for purposes of
14 identification as of this
15 date.)

16 EXAMINER JONES: Mr. Robertson, you are
17 finished with those questions other than those
18 which may be of a confidential nature, is that
19 correct?

20 MR. ROBERTSON: I think so.

21 EXAMINER JONES: It's my understanding that
22 Mr. Robertson will be asking some questions

1 regarding confidential information, information
2 that's been designated as confidential, and that
3 will happen at this time which means we will go in
4 camera in just a minute. But is it correct that
5 ComEd has no redirect of this witness?

6 MS. READ: That is correct, Mr. Examiner.

7 EXAMINER JONES: At this time then we hereby
8 go in camera for purposes of that in camera cross
9 examination.

10 (Whereupon the following
11 pages 252 through 266 are
12 contained under separate
13 cover for the in camera
14 portion of the proceedings.)

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1 EXAMINER JONES: Thank you. We are back in
2 open session. I just want to note for the record
3 that during a portion of that in camera hearing
4 there were two exhibits that were admitted into the
5 evidentiary record. Both were marked as
6 confidential or proprietary. One was IIEC Cross
7 Examination Exhibit Number 2 On Reopening. And the
8 other was NewEnergy Cross Examination Exhibit
9 Number 1 On Reopening. There was some cross
10 examination conducted of the witness during the in
11 camera portion of the hearing by Mr. Robertson and
12 then later by Mr. Fein.

13 All right. Now, Mr. Robertson, what
14 were you --

15 MR. ROBERTSON: I would like to ask the
16 witness a follow-up question which is related to
17 the cross that was conducted in camera. But the
18 question and information sought to be elicited is
19 not confidential information.

20 MS. READ: Your Honor, I would state this is
21 somewhat irregular. I thought Mr. Robertson had
22 concluded his non-in camera cross when we went in

1 camera. He then did his in camera cross. I
2 announced I had no redirect, and now he wants to
3 ask follow-up questions. And we object.

4 EXAMINER JONES: Objection is sustained. We
5 have to draw the line somewhere here in these
6 proceedings.

7 MR. ROBERTSON: I would move that the Examiner
8 take judicial notice of the Company's FERC Form I,
9 December 31, 1999, which shows that the Company's
10 total --

11 EXAMINER JONES: If you will excuse me, I
12 think we need to proceed here. If you want to make
13 a motion later in this hearing after maybe we have
14 gotten through some more witnesses --

15 MR. ROBERTSON: Why don't I make it in
16 writing?

17 EXAMINER JONES: Well, if we close the record
18 today, I am not sure where that leaves the motion.
19 If you want to get back to that question later
20 today, we can. But I do not want to delay the
21 hearing today any longer with these kinds of
22 issues. I am not trying to downplay them, but we

1 really need to cover as much ground as we can with
2 the witnesses. And to the extent we need to get
3 back to a question like that, we will take that up
4 later.

5 MR. REED: Is the witness excused,
6 Mr. Examiner?

7 EXAMINER JONES: Yes.

8 (Witness excused.)

9 All right. Off the record regarding the
10 status of this hearing and the witnesses and so on.

11 (Whereupon there was then
12 had an off-the-record
13 discussion at which time ICC
14 Staff Exhibits 8.0 and 8.1P,
15 8.2P and 8.3P were marked
16 for purposes of
17 identification as of this
18 date.)

19 EXAMINER JONES: Back on the record. I
20 believe the next order of business is to proceed
21 with the Staff witness. It was also noted off the
22 record that certain testimony will be put in by

1 affidavit. That would be for Linda Bowyer and then
2 also for the Philip O'Connor/Tom Bramschreiber
3 NewEnergy panel. And it's my understanding that
4 the stipulation with respect to that NewEnergy
5 testimony also involves the placement into the
6 record of a DR response. So we will pin that down
7 a little bit later.

8 I believe this witness has been
9 previously sworn. Is he still under oath?

10 MR. ZURASKI: You mean in the earlier version
11 before we got to the reopening?

12 EXAMINER JONES: Correct.

13 MR. REVETHIS: Yes, he has been previously
14 sworn.

15 EXAMINER JONES: You are still under oath,
16 sir.

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1 RICHARD J. ZURASKI

2 called as a Witness on behalf of the Staff of the
3 Illinois Commerce Commission, having been first
4 duly sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. REVETHIS:

7 Q. Sir, would you kindly state your name,
8 title and business address for the record, if you
9 would, please.

10 A. Richard J. Zuraski, senior economist for
11 the Illinois Commerce Commission, 527 East Capitol
12 Avenue, Springfield, Illinois.

13 Q. Do you have before you, sir, a document
14 which has been previously marked for purposes of
15 identification as Illinois Commerce Commission
16 Staff Exhibit 8.0 which is entitled "The Testimony
17 On Reopening of Richard J. Zuraski, Senior
18 Economist, Illinois Commerce Commission, Energy
19 Division, Policy Section," dated February 16,
20 2001, consisting of four pages of narrative
21 testimony, sir?

22 A. Yes.

1 Q. You also have before you, sir, a
2 document which has been previously marked for
3 purposes of identification as ICC Exhibit 8.1P
4 which is entitled "Commonwealth Edison -
5 Confidential," also ICC Exhibit 8.2P which is
6 entitled "The Illinois Power - Confidential," and
7 also Exhibit 8.3P which is entitled "Ameren -
8 Confidential," sir?

9 A. Yes.

10 Q. I ask you, sir, whether the narrative
11 testimony and the exhibits that I have referred to,
12 the supportive exhibits, were in fact prepared by
13 you, sir, or under your direction and control?

14 A. Yes, they were.

15 Q. Are there any additions, modifications
16 or corrections you wish to make to either your
17 narrative text or supportive exhibits at this time?

18 A. No.

19 Q. If I were to at this time to ask you
20 exactly the same questions as set forth in your
21 narrative testimony, would you in fact give exactly
22 the same responses here and now today, sir?

1 A. Yes.

2 Q. Is it your intent that this be your
3 sworn testimony in this proceeding?

4 A. Yes.

5 MR. REVETHIS: Mr. Examiner, at this time we
6 ask that the direct narrative testimony of the
7 witness be admitted into the record at this time
8 and we also ask that the supportive exhibits 8.1P,
9 8.2P and 8.3P be also admitted into evidence at
10 this time, and we offer the witness for cross
11 examination, also.

12 EXAMINER JONES: Any response to that motion?
13 There is not. Staff Exhibits 8.0, 8.1P as in
14 proprietary, 8.2P and 8.3P are hereby admitted into
15 the evidentiary record at this time.

16 (Whereupon ICC Staff
17 Exhibits 8.0, 8.1P, 8.2P,
18 8.3P were admitted into
19 evidence.)

20 All right. The witness is tendered for
21 cross. I think that one of the parties had a few
22 minutes of questions, is that right?

1 MR. FEIN: Very brief, yes.

2 EXAMINER JONES: All right, Mr. Fein.

3 CROSS EXAMINATION

4 BY MR. FEIN:

5 Q. Good afternoon, Mr. Zuraski. Are you
6 familiar with the so-called Zuraski Adjustment?

7 A. I didn't call it that, by the way. But,
8 yes, I am familiar with it.

9 Q. Are you the same Zuraski that's referred
10 to in the name the Zuraski Adjustment?

11 A. Probably.

12 Q. You also understand, I gather,
13 Commonwealth Edison's methodology for calculation
14 of market value in this case?

15 A. Yes.

16 Q. Do you understand any difference between
17 the so-called Zuraski Adjustment and the
18 methodology that the Company is utilizing?

19 A. Yes.

20 Q. What is that?

21 A. There is -- if I may simplify it a
22 little bit?

1 Q. Please do.

2 A. There is two major differences. One is
3 that the modified method that ComEd proposed is not
4 limited to the on-peak hours and also looks at the
5 off-peak hours and attempts to shape the input
6 prices for both on-peak and off-peak hours.

7 The second change is that there is a
8 shift away from using an average times an average
9 and more towards treating each hour as a separate
10 entity. The way I like to look at it is, whereas
11 the Zuraski method tended to look at an expected
12 price for an hour times an expected quantity for an
13 hour, the ComEd proposed modification moves closer
14 towards looking at the expected price times
15 quantity for an hour. And there is a difference
16 between those two when the price and the quantities
17 are correlated.

18 I am not saying that either one of those
19 two perfectly hones in on the way I attempted to
20 simplify their description. But they -- I believe
21 that the way I did describe it is a reasonably fair
22 characterization in the context of this proceeding.

1 Q. When performing both of the
2 calculations, do you know whether they result in
3 the same result, same number?

4 A. They do not result in the same number.

5 MR. FEIN: Nothing further.

6 EXAMINER JONES: Is there any redirect?

7 MR. REVETHIS: No. Thank you so much,

8 Mr. Examiner.

9 EXAMINER JONES: All right. Thank you, sir.

10 (Witness excused.)

11 Why don't we go ahead and cover the two
12 witnesses who are not physically present here
13 today? I believe there is no disagreement on this.
14 But it's IIEC's request that Ms. Bowyer's testimony
15 on reopening be admitted into the evidentiary
16 record by affidavit, is that right, Mr. Robertson?

17 MR. ROBERTSON: That's correct, Mr. Examiner.

18 EXAMINER JONES: We need to give that document
19 an exhibit number.

20 MR. ROBERTSON: We could call it IIEC Exhibit
21 1 On Reopening?

22 EXAMINER JONES: We could, but I think

1 everyone else on the actual exhibits has used more
2 of a sequential approach. And so if that's all
3 right, why don't we just give it the next exhibit
4 number which I think would be 3.0.

5 MR. ROBERTSON: Okay.

6 EXAMINER JONES: Other than cross exhibits I
7 think everyone else has used the next number.

8 MR. ROBERTSON: Tell you something off the
9 record, if I may.

10 EXAMINER JONES: Off the record.

11 (Whereupon there was then
12 had an off-the-record
13 discussion.)

14 EXAMINER JONES: Back on the record. There
15 was a short off-the-record discussion regarding
16 exhibit identification on reopening. In any event,
17 IIEC through its counsel Mr. Robertson would like
18 Ms. Bowyer's testimony on reopening to be marked as
19 IIEC Exhibit Number 1 On Reopening to correspond to
20 the affidavit that is in the works, and that's
21 fine.

22 Does anyone have any objection to the

1 admission by affidavit of IIEC Exhibit Number 1 On
2 Reopening consisting of the so-called reply
3 testimony of Linda Bowyer On Reopening? They do
4 not. Let the record show that IIEC Exhibit 1 On
5 Reopening -- I will make that 1.0 on reopening.
6 Okay?

7 MR. ROBERTSON: That's fine.

8 EXAMINER JONES: Is hereby admitted.

9 (Whereupon IIEC Exhibit
10 Number 1 On Reopening was
11 admitted into evidence.)

12 And as far as the testimony and a DR
13 response involved with the O'Connor/Bramschreiber
14 testimony on reopening, what's the arrangement
15 there?

16 MR. FEIN: Two part. Commonwealth Edison
17 would like to mark as an exhibit a data request and
18 response. Illinois Power would like to, I believe,
19 orally read a stipulation which I believe we have
20 orally agreed to. And I would provide the Hearing
21 Examiner and the court reporter with an affidavit.
22 I can get it done tomorrow and sent overnight for

1 Thursday. And I have pre-marked the joint direct
2 testimony as AES NewEnergy Reopening Exhibit but
3 obviously you are the Examiner, however you would
4 like me to mark it.

5 EXAMINER JONES: Has that been given to the
6 court reporter yet?

7 MR. FEIN: Not yet. I was waiting to formally
8 number it.

9 EXAMINER JONES: The affidavit is not there
10 yet because that's a very current development.

11 MR. FEIN: Correct.

12 EXAMINER JONES: If it's all right, I think we
13 might give that more of a sequential number.

14 MR. FEIN: That's fine. I think it would be
15 Number 5. There were four pieces in the initial
16 phase, three from the panel and then one from the
17 witness Kagan. So I will do so and provide copies.

18 EXAMINER JONES: And I don't think either IIEC
19 or NewEnergy needs to overnight those affidavits.
20 Everybody knows what's in the testimony. It's kind
21 of a housekeeping thing at this point. So you can
22 just mail those in. Put them in the mail by the

1 end of the week and that will be sufficient.

2 MR. ROBERTSON: Mail them to you,

3 Mr. Examiner?

4 EXAMINER JONES: Good question. Go ahead and
5 send them to the Chief Clerk's office under a cover
6 letter and CC me on the cover letter and I will be
7 looking for it.

8 MR. ROBERTSON: All right. Thank you.

9 EXAMINER JONES: And just so we are clear on
10 that, will that include the testimony itself and
11 the affidavit attached to it to comprise that
12 exhibit?

13 MR. ROBERTSON: We can if you wish. I have
14 given the reporter three copies of the testimony of
15 Dr. Bowyer, but I can attach copies to the
16 affidavit as well.

17 EXAMINER JONES: If you have already provided
18 it to the court reporter, just send in the
19 affidavit. Just make sure it's clear in the cover
20 letter and we will get that married to the
21 testimony itself. And how do you want to do yours?

22 MR. FEIN: Whatever the pleasure is. I can

1 provide an entire exhibit with affidavit with the
2 testimony.

3 EXAMINER JONES: If you have it here and it's
4 ready to be marked, you can just do the same thing
5 as Mr. Robertson. You can just send in the
6 affidavit if you want and we will treat that as
7 part of this exhibit and attach it to it. So leave
8 is given to do that.

9 Now, as far as the other piece of the
10 stipulation regarding the NewEnergy testimony, was
11 something to be read into the record or just
12 admitted as some sort of an exhibit?

13 MS. READ: We could call it a cross exhibit.

14 MR. REED: It's just been designated
15 Commonwealth Edison Cross Exhibit On Reopening
16 Number 1 as it's entitled, and that's fine.

17 MR. LAKSHMANAN: And then Illinois Power has a
18 brief stipulation that we have worked out with
19 counsel for NewEnergy just to read in quickly.

20 MR. REED: I would be more than happy to
21 identify this document for the record if you would
22 like, Mr. Examiner.

1 EXAMINER JONES: You are referring to ComEd
2 Cross 1?

3 MR. REED: Yes, sir.

4 EXAMINER JONES: Yeah, that probably wouldn't
5 hurt. Just give us the title of it and that will
6 tie it up.

7 MR. REED: Certainly. Commonwealth Edison
8 Cross Exhibit Number 1 On Reopening is the response
9 of AES NewEnergy Incorporated to Commonwealth
10 Edison's second set of data requests, Request
11 Number 7, and the Company response.

12 EXAMINER JONES: All right. Thank you.

13 MR. FEIN: May I briefly comment?

14 EXAMINER JONES: Yes.

15 MR. FEIN: I am sorry to do this right now but
16 I am just noticing something in the response. The
17 request misquotes the testimony that's quoted. I
18 understand your request, the quoted portion.

19 EXAMINER JONES: Off the record to give the
20 parties a chance to discuss that since this was
21 actually a stipulation and you need a chance to
22 clarify that off the record as well.

1 (Whereupon there was then
2 had an off-the-record
3 discussion.)

4 EXAMINER JONES: Back on the record.

5 MR. REED: Just for clarification purposes,
6 the document that Commonwealth Edison has handed
7 out to be admitted into the record as a cross
8 examination exhibit has a typographical error on
9 line 4 of the request. The first word of that line
10 reflects the word "prices signals." "Prices"
11 should be deleted so that the quotation would read
12 "sends inappropriate signal," and then continues on
13 as it is stated on the document. With that
14 correction we would like to move for this exhibit
15 as a cross examination exhibit into the record.

16 EXAMINER JONES: All right. Now,
17 Mr. Lakshmanan, did you have something that was
18 part of all this as well?

19 MR. LAKSHMANAN: Yes. We have worked out with
20 NewEnergy's counsel the following stipulation,
21 that AES NewEnergy is a preferred electric supplier
22 for the Illinois Manufacturers Association and

1 BOMA, B-O-M-A, and that some of AES NewEnergy's
2 customers are the Art Institute, Alberto Culver
3 Company, Chicago Extruded Metals, Equity Office
4 Properties, Daimler Chrysler Corporation, DuPage
5 Water Commission, Ford Motor Company, Loyola
6 University Medical Center, Northern Illinois
7 University, and Wendy's International.

8 MR. FEIN: NewEnergy thanks Mr. Lakshmanan for
9 the marketing opportunities.

10 EXAMINER JONES: Mr. Lakshmanan, was there
11 anything else you needed stated for the record
12 regarding that?

13 MR. LAKSHMANAN: No. We just -- we worked
14 that out as a stipulation as to facts regarding AES
15 NewEnergy. Thank you, Mr. Hearing Examiner.

16 EXAMINER JONES: All right. So there is, I
17 guess, three pieces of this. One would be the
18 admission of NewEnergy Exhibit Number 5, that being
19 the joint direct testimony on reopening of Philip
20 R. O'Connor and Tom Bramschreiber subject to any
21 prior rulings. And the admission of ComEd Cross
22 Examination Exhibit Number 1 On Reopening as

1 described by Mr. Reed. And then, finally, the
2 stipulation read into the record by Mr. Lakshmanan.

3 Does any party have any objection to any
4 of that? All right. Let the record show they do
5 not.

6 Accordingly, NewEnergy Exhibit Number 5 is admitted
7 into the evidentiary record subject to any prior
8 rulings. ComEd Cross Exhibit Number 1 On Reopening
9 is also admitted into the evidentiary record in
10 this docket.

11 (Whereupon NewEnergy
12 Exhibit Number 5 and ComEd
13 Cross Exhibit Number 1 On
14 Reopening were admitted into
15 evidence.)

16 Mr. Lakshmanan, was the stipulation you
17 read into the record intended to be considered
18 evidentiary input into the record or something
19 else?

20 MR. LAKSHMANAN: Factual, yes, evidentiary as
21 to facts relating to AES NewEnergy and their
22 customers.

1 EXAMINER JONES: Does anybody object to that
2 information being considered part of the
3 evidentiary record? They do not. The information
4 set out by Mr. Lakshmanan in what he referred to as
5 a stipulation is deemed part of the evidentiary
6 record in this docket.

7 All right. Off the record regarding
8 scheduling.

9 (Whereupon there was then
10 had an off-the-record
11 discussion.)

12 (Whereupon the hearing was
13 in a short recess at which
14 time IIEC Exhibit 1.0 On
15 Reopening, ComEd Cross
16 Exhibit 1 On Reopening, AES
17 NewEnergy Exhibit Number 5
18 On Reopening and AES
19 NewEnergy Exhibit Number 6
20 On Reopening was marked for
21 purposes of identification
22 as of this date.)

1 EXAMINER JONES: Back on the record. Does
2 NewEnergy have a witness to call?

3 MR. FEIN: Yes, we do, Mr. Examiner.
4 NewEnergy calls Daniel J. Somers.

5 EXAMINER JONES: Sir, please raise your right
6 hand to be sworn.

7 (Whereupon the Witness was
8 duly sworn by Examiner
9 Jones.)

10 DANIEL J. SOMERS
11 called as a Witness on behalf of AES NewEnergy
12 Incorporated, having been first duly sworn, was
13 examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. FEIN:

16 Q. Mr. Somers, could you state your name,
17 spelling your last name for the record.

18 A. Daniel J. Somers, spelled S-O-M-E-R-S.

19 Q. And who are you testifying on behalf of
20 today?

21 A. AES NewEnergy.

22 Q. And do you have in front of you a copy

1 of a document entitled "Direct Testimony On
2 Reopening of Daniel J. Somers"?

3 A. Yes, I do.

4 Q. That document consists of 22 pages of
5 question and answers and one attachment, is that
6 correct?

7 A. That's correct.

8 Q. Was this testimony prepared by you?

9 A. Yes, it was.

10 Q. Do you have any changes, additions or
11 corrections to your prefiled testimony?

12 A. No, I don't.

13 Q. If I asked you the same questions which
14 are contained in your prefiled direct testimony,
15 would your answers be the same today?

16 A. Yes.

17 MR. FEIN: With that I would move for the
18 admission of AES NewEnergy Exhibit Number 6 and
19 tender the witness for cross examination.

20 EXAMINER JONES: Are there any responses to
21 the motion?

22 MS. READ: I just had a question. Dave, I

1 didn't hear you reference Attachment A. Is that
2 part of the exhibit?

3 MR. FEIN: I did.

4 MS. READ: I just didn't hear it. I have no
5 objection.

6 MR. FEIN: For marking purposes we just left
7 it as one exhibit number.

8 EXAMINER JONES: Let the record show that
9 NewEnergy Exhibit Number 6 sponsored by Mr. Somers
10 is hereby admitted into the evidentiary record as
11 part of this reopened proceeding.

12 (Whereupon AES NewEnergy
13 Exhibit Number 6 On
14 Reopening was admitted into
15 evidence.)

16 MR. FEIN: With that we would tender the
17 witness for cross examination.

18 EXAMINER JONES: Thank you. I believe there
19 are parties who have cross examination questions
20 for this witness. Ms. Read?

21

22

1 CROSS EXAMINATION

2 BY MS. READ:

3 Q. Good evening, Mr. Somers.

4 A. Good evening.

5 Q. You discuss two, at least two, different
6 models in your testimony, the Black Scholes Model
7 and the Black's Model, correct?

8 A. That's correct.

9 Q. And one of the differences between those
10 two models is that the Black Scholes Model is used
11 to value stock options while the Black's Model is
12 used to value commodity options?

13 A. Typically, options on futures is your
14 Black's Model, yes, and the Black Scholes Model
15 would be for equities and similar items.

16 Q. If you would look at Attachment A to
17 your testimony which is your vitae?

18 A. Actually, I don't have A.

19 MR. FEIN: Here, let me give it to you.

20 (Whereupon said document
21 was provided to the witness
22 by Mr. Fein.)

1 Q. And about halfway down I want to ask you
2 some questions about the reference to a modified
3 Black's Model for electricity price volatility. Do
4 you see that reference?

5 A. Yes.

6 Q. The Black's Model is not typically used
7 in the electric industry without modification,
8 correct?

9 A. That is correct.

10 Q. Can you explain to me some of the
11 modifications that were made in this model that's
12 referenced in your vitae?

13 A. This was a proprietary model with the
14 client with whom I have a contract.

15 Q. So is it correct that the design of a
16 Black's Model is in general highly confidential and
17 proprietary?

18 A. I wouldn't say in general. It depends
19 on who is making that model and what they are using
20 it for. But this particular one is.

21 Q. Is it correct that not just this model
22 but the model referenced on page 4, line 1, of your

1 testimony is also a proprietary model built for a
2 client with whom you have a confidentiality
3 agreement?

4 A. That would be correct.

5 Q. And isn't it correct that any model that
6 you have first-hand knowledge of that is used by an
7 electric utility is highly confidential and
8 proprietary and subject to confidentiality
9 agreements?

10 A. Until this point, yes, that would be
11 correct.

12 Q. Until this point. Are you referring to
13 the MVI methodology?

14 A. Yes, I guess. The MVI methodology is
15 public record, I believe.

16 Q. Well, let me ask you again. As you sit
17 here today is it correct that any model employed by
18 an electric utility that you have first-hand
19 knowledge of is highly confidential and proprietary
20 and subject to confidentiality agreements?

21 A. Any model that I have devolved for an
22 electric utility until this point has been, that I

1 have developed, has been proprietary, that is
2 correct.

3 Q. Were you asked with respect to your
4 testimony on page 5, lines 18 through 20, to state
5 which electric utilities employ the approach
6 referenced in your testimony and the manner in
7 which it is employed, and did you not respond that
8 any models that Mr. Somers has first-hand knowledge
9 of are highly confidential and proprietary and
10 subject to confidentiality agreements?

11 A. Yes.

12 MR. FEIN: What were you referring to? His
13 testimony?

14 MS. READ: I was referring to his testimony
15 and then the Data Request Number 17 with the
16 response, because he was not in my view giving a
17 full responsive answer. But I think we have
18 cleared that up and we can move on.

19 Q. Is it also correct that your first-hand
20 knowledge of which utilities use a Black Scholes
21 Model or a Black's Model or a variation thereof is
22 highly confidential and proprietary and subject to

1 confidentiality agreements?

2 A. Yes.

3 Q. So you have not provided any of those
4 models to ComEd for analysis or evaluation,
5 correct?

6 A. No, I have not.

7 Q. And not only is the design of the model
8 and the knowledge of -- strike that. When we say
9 that the design of the model is highly confidential
10 and proprietary, that includes the exact
11 modifications and the assumptions being used,
12 correct?

13 A. That would be correct.

14 Q. Now, it is correct from your vitae that
15 a standard Black's Model would -- strike that. Do
16 I understand correctly from your vitae reference to
17 the modified Black's Model being the first
18 derivative-spaced pricing strategy for electricity
19 markets accepted by major credit rating agencies,
20 that an unmodified Black's Model would not be
21 accepted?

22 A. I don't know if it wouldn't be accepted,

1 but I wouldn't try to get one accepted. I wouldn't
2 think that would be accurate enough.

3 Q. Is one of the reasons that a Black's
4 Model is not itself used as originally designed
5 because it's not directly applicable to electric
6 markets?

7 A. What's true is that all the assumptions
8 are not directly applicable. And as in modeling
9 any complicated process, assumptions are made. The
10 assumptions are carefully chosen to be rational and
11 make the result fit within boundary conditions that
12 are rational.

13 Q. Doesn't the Black's Model assume an
14 optimal exercise or that the option holder will
15 exercise its option whenever the market price is
16 higher than the pre-determined strike price and not
17 at any other time?

18 A. Not necessarily. More, it assumes that
19 the ability to hedge is always present and it's
20 costless.

21 Q. Would you agree that that assumption is
22 different than standard retail customer behavior in

1 deciding when to turn on a light switch?

2 A. I would agree that that is different.

3 But just saying it is different doesn't mean that
4 it may be a difference that's tangible.

5 Q. Do you think when a retail customer
6 turns on its light switch, it is checking to see
7 what the market price is compared to the tariff
8 rate they might be paying?

9 A. I think that's unlikely.

10 Q. Do you think your average retail
11 customer goes out and hedges the market values?

12 MR. FEIN: I would object to what you mean by
13 average retail customer. You talking about
14 residential, non-residential?

15 MS. READ: Well, we can do non-residential.

16 THE WITNESS: Ask that again, please.

17 MS. READ: Could you read it back, please?

18 (Whereupon the requested
19 portion was then read back
20 by the Reporter.)

21 A. Average. Once again, just saying there
22 are some customers that do that but I would not

1 consider that to be the majority, no.

2 Q. You would agree that often consumer
3 behavior is driven by needs other than the current
4 market price?

5 A. I would agree.

6 Q. To run a modified Black's Model it is
7 correct that you need to use a number of
8 assumptions, correct?

9 A. Yes.

10 Q. And those assumptions might include
11 assumptions with respect to the volatility of
12 prices?

13 A. Yes.

14 Q. How constant volatility is with time and
15 price level?

16 A. That is correct.

17 Q. The shape of the future distribution of
18 prices?

19 A. Also correct.

20 Q. The exercise patterns of the option
21 holder?

22 A. That is not necessarily the case, no.

1 Q. But it may be the case?

2 A. It possibly could be the case, yes.

3 Q. How about the risk free rate?

4 A. A risk free rate would have to be

5 assumed, correct.

6 Q. The strike price of the option?

7 A. That is correct.

8 Q. The current forward price?

9 A. It would not necessarily be. That could

10 be a consideration, yes.

11 Q. The maturity date of the option?

12 A. That would also be an assumption.

13 Q. Is it correct that the parties that

14 design and use these models may differ on those

15 assumptions?

16 A. That is correct.

17 Q. And because they differ, their judgments

18 with respect to those assumptions is one of the

19 things that makes the modified model highly

20 proprietary and confidential, correct?

21 A. The way you would model the behavior

22 would be something that would be highly

1 confidential and proprietary, yes.

2 Q. Now, as a consultant in general would
3 you recommend that a utility rely on a model that
4 is never reviewed?

5 A. No.

6 Q. Would you recommend that a utility rely
7 on a model that's not been tailored to the specific
8 purpose for which it's being used?

9 A. Models should be tailored to the purpose
10 that it is used, correct.

11 Q. When you recommend on page 5 of your
12 testimony, lines 21 through 22, that utilities use
13 their internal methods for valuing optionality, are
14 you proposing that the utility be the sole arbiter
15 of the model used and the assumptions that go into
16 it?

17 A. The gist of what I was saying there is
18 along the lines of the way that someone may model
19 it in their view. Different people may --
20 different utilities or different companies may
21 model optionality in different manners. They may
22 do so with binomial trees, they may do so by a

1 Monte Carlo simulation-based model or they may well
2 use Black's Model in futures with appropriate
3 modifications.

4 Q. And all those models require
5 assumptions, correct?

6 A. Every model to my knowledge requires
7 assumptions.

8 Q. And all those models are likely to be
9 confidential and proprietary, correct?

10 A. To some extent, yes. To a large extent,
11 yes.

12 Q. So are you proposing that the utilities
13 be the sole arbiter of the assumptions used to run
14 the models or not?

15 A. I really don't understand what you are
16 getting at. Will you rephrase that?

17 Q. Okay. Actually, I will move on from
18 that one. Would you agree that the use of
19 historical data to represent degrees of future
20 uncertainty in correlation to determine effects on
21 value is a common practice in the financial
22 industry?

1 A. It's a common practice used as a part of
2 the analysis but perhaps even as the foundation for
3 the analysis.

4 Q. Would you agree that Beta, for example,
5 is a standard risk measure for financial
6 securities?

7 A. I wouldn't call it a standard measure
8 any more but it's a common measure.

9 Q. And isn't Beta most commonly measured by
10 examining how the price of the security has moved
11 in the past?

12 A. It's measured as a relationship to the
13 general marketplace or some other measure. That is
14 correct.

15 Q. Would you agree that many publications
16 quote Betas based solely on historical data?

17 A. I would agree that publications do quote
18 Beta. Whether that is worth the paper it is
19 written on is another matter.

20 Q. Isn't it true that there are investors
21 that often use Betas as measures of future market
22 risk when performing evaluation analyses?

1 MR. FEIN: I object to the relevance and also
2 on the grounds that the question calls for
3 speculation on whether investors might or might not
4 base decisions upon it. It seems a little far
5 afield from his testimony.

6 MS. READ: Your Honor, I understand that
7 NewEnergy was offering this witness as an expert on
8 pricing various types of options, including stock
9 options, which we moved to strike but weren't
10 successful in. And on page 10, for example, this
11 witness talks about Black Scholes applied to
12 pricing of stock option and makes various
13 statements on line 12 through 19 about historical
14 measurements of the stocks return. And I think
15 this cross is very much on point.

16 MR. FEIN: Well, while the witness' testimony
17 addresses that, we are not talking about
18 publications that publish Betas and whether
19 investors base their decisions solely upon what
20 they read in a publication based upon Beta. I
21 think we are going far afield from what his
22 testimony addressed.

1 EXAMINER JONES: Mr. Fein, do you agree that
2 this witness is testifying as an expert?

3 MR. FEIN: Sure.

4 EXAMINER JONES: On the subjects that Ms. Read
5 stated she understands him to be?

6 MR. FEIN: Yes.

7 EXAMINER JONES: I believe that the line of
8 cross is proper cross of this expert witness.

9 A. I believe that there is a wide variety
10 of ways that -- I don't believe; I know that there
11 is a wide variety of ways that people make
12 investment decisions. Using Beta would be one of
13 them. There is no reason to believe that's the
14 best one or the worst one. It's just one of many.

15 Q. On page 11, line 7, you reference an
16 electric price there. That's a historical price,
17 correct?

18 A. That is correct.

19 Q. And you are relying on it to indicate
20 that electric prices can be volatile?

21 A. That is correct.

22 Q. And on page 13, line 14, the data on

1 pricing dynamics you reference there is historical
2 data, correct?

3 A. Yes. Historical data makes a good
4 foundation for any analysis. It just doesn't cover
5 all the likely outcomes going forward. There is
6 some uncertainty going forward. It may be small
7 but there is.

8 MS. READ: I move to strike the answer after
9 "yes." Well, can you read it back and I will tell
10 you which part my motion to strike relates to?

11 (Whereupon the requested
12 portion was then read back
13 by the Reporter.)

14 MS. READ: I am moving to strike anything
15 following "good foundation for any analysis."

16 EXAMINER JONES: Motion granted. I think the
17 witness answered a different question than the one
18 that was asked from that point forward.

19 Q. Would you look at page 11, lines 15
20 through 16, of your testimony?

21 A. Uh-huh.

22 Q. Isn't it correct that historical data is

1 often used to estimate volatility in Black's Model?

2 A. Not entirely, no.

3 Q. Mr. Somers, you stated in your vitae and
4 in your testimony that you have taught a graduate
5 level course called "Introduction to Energy
6 Markets," correct?

7 A. That's correct.

8 Q. And you taught that in the fall of 1999?

9 A. The last time I taught it was the fall
10 of '99, yes.

11 Q. That was the only time you taught it,
12 correct?

13 A. Yes.

14 Q. In fact, it isn't currently being
15 offered, correct?

16 A. Not right now, no.

17 Q. And you are currently not employed by
18 IIT, correct?

19 A. Correct.

20 Q. So on your vitae when you reference
21 Instructor - Center for Law and Financial Markets,
22 1999 to the present, that references your teaching

1 in the fall of 1999?

2 A. There is a typographical error. On the
3 line above it says just to '99, where it says
4 "Illinois Student Technology 1999." I didn't
5 delete the present part, you are right.

6 Q. Did others teach this class?

7 A. No.

8 Q. Whether or not this class will be taught
9 for the next four semesters is still being
10 determined, correct?

11 A. That is correct, due to lack of
12 interest.

13 Q. Was one of the books you used to teach
14 this class Options Futures and Other Derivatives,
15 Fourth Edition, by John C. Hull?

16 A. That is correct.

17 Q. Just an aside off the record.

18 (Whereupon there was then
19 had an off-the-record
20 discussion.)

21 Q. Do you recall whether with respect to
22 the Black Scholes Model this textbook states that

1 to estimate the volatility of a stock price
2 empirically, the stock price is usually observed at
3 fixed intervals of time, e.g. every day, week or
4 month?

5 A. And the key word there is empirically.
6 Yes, that is true empirically.

7 Q. Okay. And those are historical
8 observations, correct?

9 A. Which are the foundation of an estimate
10 for volatility going forward, correct.

11 Q. And in terms of implied volatilities,
12 those are often calculated using an option price
13 observed in the market, correct?

14 A. That would be referred to as the implied
15 volatility by the marketplace, that is correct.

16 Q. Would you agree that there are many
17 calculations of implied volatility that overstate
18 the true volatility because they assume a logged
19 normal distribution of prices when such a
20 distribution does not actually exist?

21 A. That could be a potential reason.

22 Q. If you look at page 11, lines 15 through

1 16, if your contention stated there was true,
2 wouldn't we see that the distribution of market
3 prices would systematically increase over time?

4 A. That the distribution would increase
5 over time, no, not necessarily.

6 Q. If you would look at page 19, lines 18
7 to 23?

8 A. Yes.

9 Q. Do you see the reference there to a
10 physical option?

11 A. Yes.

12 Q. And that's defined as determine the cost
13 associated with hedging the risk with physical
14 assets?

15 A. Correct.

16 Q. The physical option essentially refers
17 to load-following plants or can they refer to
18 load-following plants, correct?

19 A. It can, yes.

20 Q. So would you agree with me that whether
21 or not an entity can take advantage of
22 load-following assets is not in fact irrelevant as

1 you state on page 15, line 14?

2 A. Please ask that again.

3 Q. Could you read it back?

4 (Whereupon the requested
5 portion was then read back
6 by the Reporter.)

7 A. I don't believe I state that it's
8 irrelevant, so I don't agree.

9 Q. Didn't you characterize Edison's
10 discussion of load-following assets as irrelevant,
11 page 15, line 14? We can always delete that
12 statement if you would like.

13 A. What is irrelevant is characterizing
14 having load-following assets as taking care of
15 everything. That is irrelevant.

16 Q. Load-following assets are in fact a
17 physical option and one means of managing risk as
18 stated on page 19, lines 18 through 23, of your
19 testimony, correct?

20 A. But that is not necessarily a way to
21 mitigate all risks.

22 Q. It is one way to mitigate risks?

1 A. That will mitigate some of the risks,
2 that is correct.

3 Q. Even assuming a RES buys an option to
4 manage risk, it would not buy an option for more
5 than the percent of load that is uncertain, is that
6 correct?

7 A. That's not necessarily true.

8 Q. Well, let's say you have a RES whose 90
9 percent of their load is extremely predictable.
10 Ten percent has some variability. Do you have
11 those assumptions in mind?

12 A. Uh-huh.

13 Q. If they were purchasing an option solely
14 to hedge the cost of serving the uncertain load,
15 would they buy it for the 90 percent or the ten
16 percent?

17 A. They would buy it for something more
18 like the ten percent likely, but that might be
19 true, yes.

20 Q. And if 99 percent of their load was very
21 certain and one percent was variable, they would be
22 more likely to buy it for the one percent than the

1 99 percent, correct?

2 A. One percent or some increment thereof
3 that they felt could represent their needs which
4 may be beyond their projections, something along
5 those lines. Or they may also buy some additional
6 in order to take care of operations risk or
7 whatever, yeah.

8 Q. So might a RES also buy an option with
9 the hope of exploiting it financially?

10 A. Depending on their risk profile, that
11 could be the case.

12 Q. Would you agree that the cost for any
13 individual supplier does not necessarily equal the
14 market value of power and energy?

15 A. Yes, I guess I would have to agree with
16 that.

17 Q. Do you know how many RESs are in this
18 proceeding?

19 A. No, I don't.

20 Q. Do you know -- strike that. Do you know
21 whether NewEnergy uses an optionality adjustment in
22 setting retail prices?

1 A. If I did know that, I wouldn't be
2 allowed to divulge it.

3 Q. But I assume from your answer that you
4 don't know that, is that correct?

5 A. Once again, even if I did, I really
6 don't --

7 Q. I am just asking, do you know?

8 A. I don't know.

9 Q. Do you know whether NewEnergy purchases
10 options?

11 A. Once again, I don't know.

12 Q. Do you know whether NewEnergy -- do you
13 know whether AES NewEnergy has any physical
14 options?

15 A. I really don't know.

16 Q. You have done no study of NewEnergy's
17 costs, correct?

18 A. No.

19 Q. And, similarly, you have done no study
20 of the risk management strategies or costs of Nicor
21 Energy, correct?

22 A. No.

1 Q. Unicom Energy?

2 A. No.

3 Q. And you have done no such study for
4 Peoples Energy, correct?

5 A. No.

6 Q. You have no idea of those RESs, what
7 their strategy is, what their costs are or how they
8 compare to each other, correct?

9 A. That's not entirely true. But from a
10 general market perspective I guess, yes. But not
11 in detail of the companies, no.

12 Q. You did not rely on any such study or
13 analysis in preparing your testimony, correct?

14 A. No, my understanding of the markets in
15 general and specific markets around the country.

16 Q. But that general understanding tells you
17 nothing about specific costs or specific risk
18 management strategies, correct?

19 A. That's right.

20 Q. In fact, you relied on no documents or
21 workpapers in preparing your testimony other than
22 some publicly available documents referenced within

1 AES NewEnergy's prefiled direct testimony on
2 reopening and other documents filed in this
3 proceeding, correct?

4 A. Correct.

5 Q. I would like to ask you about which
6 documents you have reviewed in preparing your
7 testimony. You reviewed ComEd's tariff?

8 A. Yes.

9 Q. Did you review the testimony prefiled by
10 NewEnergy?

11 A. Yes.

12 Q. Did you review the cross examination?

13 A. I believe so. Quite frankly, I have
14 reviewed so many documents, I don't think I could
15 tell you each one off the top of my head.

16 Q. Do you know whether you reviewed
17 Commonwealth Edison's testimony?

18 A. I believe I did.

19 Q. Do you know whether you reviewed any
20 workshop materials?

21 A. I believe I reviewed some of them.

22 Q. When were you first engaged to work on

1 this testimony?

2 MR. FEIN: Can you maybe explain to him what
3 you mean by "engaged"?

4 Q. When did you first begin working on
5 preparing this testimony?

6 A. I believe it was three weeks ago,
7 perhaps three and a half.

8 Q. Did you get the entire record and just
9 start reading through it or did you have someone
10 select materials for you?

11 A. I don't know if they were selected or
12 not. I believe I got a pretty comprehensive data
13 dump.

14 Q. Do you know whether you reviewed any
15 materials that were marked confidential and
16 proprietary or just confidential?

17 A. I don't recall anything marked
18 confidential but that is just my recollection.

19 Q. Did your understanding of ComEd's
20 methodology come from reading the tariff?

21 A. Yes, and from discussions with parties
22 in NewEnergy.

1 Q. So your understanding of ComEd's
2 methodology came from reading the tariff and then
3 discussing it with counsel or other people at
4 NewEnergy?

5 A. Both.

6 Q. I will go to something else for a minute
7 and we will return to that. Would you look at page
8 9, lines 11 to 14?

9 A. Okay.

10 Q. You state there the future price of
11 stock is inherently random and unpredictable. Do
12 you see that?

13 A. Yes.

14 Q. Would you agree that the future price of
15 electricity is inherently random and unpredictable?

16 A. Yes.

17 Q. Do you see that further you state that
18 accurate prediction of its value, referring back to
19 future price of the stock, would require the
20 ability to read the future?

21 A. Within, you know, some limitations,
22 that's correct. I mean, there are likely outcomes

1 that are more likely than others but, yes, I would
2 agree.

3 Q. And that's true for electric prices as
4 well, correct?

5 A. That is correct.

6 Q. And Models 8 decision makers, do you see
7 that statement?

8 A. Yes.

9 Q. Models don't set prices, correct?

10 A. No, models do not set prices.

11 Q. Would you agree with me that when you go
12 to the grocery store to purchase some corn, you
13 theoretically have the right to purchase as many
14 ears of corn as you would like up to the total
15 amount in stock at the store?

16 A. Sure.

17 Q. Are commodity options traded on corn?

18 A. Yes, they are.

19 Q. When a store manager purchases corn from
20 his or her own supplier, the store manager knows
21 that the demand for corn may be variable, correct?

22 A. That is correct.

1 Q. Does that mean that the store manager
2 under your theory is required to insure against
3 variability by purchasing the right but not the
4 obligation to purchase up to a certain amount of
5 corn at some pre-determined and negotiated strike
6 price?

7 A. I think that someone pricing corn has
8 much bigger issues in mind than how they price
9 their portfolio of groceries. But further up the
10 chain the variability in corn pricing is factored
11 in and the risk is mitigated. Archer Daniels
12 Midland, for instance, has a very aggressive and
13 top notch risk management system.

14 Q. And at some level that's reflected in
15 the price of corn that the consumer sees when they
16 walk into the market?

17 A. I think that if you would look at enough
18 stores, yes.

19 Q. And it's reflected in the store
20 manager's price of corn, too, correct?

21 A. Sure.

22 Q. Bear with me just a minute. I am

1 actually going to try to eliminate some questions
2 to move this along.

3 MR. FEIN: We are all in favor of that.

4 MS. READ: I knew you would be. I just
5 thought I would let you know what I was doing.

6 Q. Now, have you ever done -- strike that.
7 In your testimony you weren't relying on any study
8 or analysis that you have performed about whether
9 the electric markets would support an optionality
10 adder, correct?

11 A. No. I just from looking at how it is
12 modeled, there is no -- the risk of serving a
13 certain load is not being reflected.

14 Q. Well, I'm not asking you right now for
15 your views on ComEd's methodology. I think we have
16 established that those were formed from the tariff
17 and your conversations with NewEnergy. What I am
18 asking you now is, as you talk about an optionality
19 adder, you have not looked to see whether Midwest
20 regional electric markets would support recovery of
21 such an adder, correct?

22 A. No.

1 Q. No, that's not correct?

2 A. I have not done an analysis.

3 Q. Thank you. You have never traded
4 electricity, correct?

5 A. I have always been a support function to
6 traders. I have never actually done the trading
7 myself, no.

8 Q. You have not done the trading yourself
9 and you have not bought or sold power or
10 electricity at retail other than through a utility
11 tariff, correct?

12 A. That's correct.

13 Q. How long was the course you took at the
14 Illinois Institute of Technology that gave you your
15 MS in financial markets? Was that one year, two
16 years, three years?

17 A. I think it was a little over two years.
18 I am not sure.

19 Q. Is it fair to say you have never worked
20 on issues concerning electric utility pricing or
21 market values prior to taking the IIT course?

22 A. Yes.

1 Q. On your vitae you use the term "member
2 of the corporate finance group at Ernst and Young"?

3 A. Yes.

4 Q. And on page 3 of your testimony you say
5 you are a project manager or manager within the
6 energy, chemical and utilities practice. Do you
7 see that reference?

8 A. Yes, that's part of the corporate
9 finance practice. Ernst and Young has overlapping
10 distinctions. They are one and the same.

11 Q. But you are not a partner at Ernst and
12 Young, for example?

13 A. I am not a partner, no.

14 Q. Most of your work has been as a project
15 manager for various engagements?

16 A. That would be correct.

17 Q. Your work is largely then in financial
18 modeling?

19 A. Yes.

20 Q. Let me see if I can get through this
21 quickly. Do you have the response of AES NewEnergy
22 to ComEd's second set of data requests, Number 14?

1 A. Number 14, I think I do. Hold on. The
2 projects that I have worked on?

3 Q. Yes.

4 A. Yes.

5 Q. And that's a more detailed description
6 of the projects than was provided in your
7 testimony, is that correct?

8 A. That's correct.

9 Q. Okay. So you have various projects
10 listed, for example, on your vitae under the
11 Cornerstone Energy Advisors. Do those projects
12 match one of the projects on this Request Number
13 14?

14 A. Some match, yes. Some don't.

15 Q. Well, Request Number 14 was "Please list
16 each specific project Mr. Somers has worked on in
17 regards to the electric industry, including but not
18 limited to the entity he worked for in any related
19 proceeding." Is that what the request was?

20 A. Uh-huh.

21 Q. Is that a yes?

22 A. Yes, sorry.

1 Q. And is what you are telling me is that
2 the response is not an all inclusive list?

3 A. I think everything that is in the vitae
4 and more is in the request, yes.

5 Q. Okay. So Request Number 14, the
6 response to Request Number 14, is a more complete
7 and specific listing than what's in your vitae but
8 it covers all the projects listed in your vitae?

9 A. I believe so.

10 Q. On page 3, lines 11 through 23, and page
11 4, lines 1 through 5, you also generally describe
12 certain projects, correct?

13 A. Uh-huh.

14 Q. Is that a yes?

15 A. Yes, I'm sorry.

16 Q. I'm sorry. The court reporter just
17 can't say uh-huh.

18 A. I am sorry.

19 Q. Are the projects that are generically
20 referenced on pages 3 and 4 of your testimony
21 covered by the more specific list given in response
22 to Request Number 14?

1 A. Yes, other than I would say, probably
2 say, that certain projects that are confidential
3 are not listed in Request Number 14. They are
4 merely more generally referred to.

5 Q. Which might those be?

6 A. Well, they are confidential so.

7 Q. Well, if they are mentioned in the
8 testimony, they can't be that confidential, can
9 they?

10 A. Well, identifying an area that you
11 worked versus identifying the specific project and
12 what you did are two very different things in my
13 mind.

14 Q. When you say I have led -- I am looking
15 at page 3, line 11 -- or was a key participant in
16 the modeling of future electricity prices...

17 A. Uh-huh.

18 Q. ..When you say led, are you referring to
19 being a project manager?

20 A. That's correct.

21 Q. And then you say modeling future
22 electricity prices in many control areas. Is that

1 a confidential project?

2 A. Some of them are confidential, yes.

3 Q. When you say you modeled prices in many
4 control areas, you weren't working for the control
5 area, correct?

6 A. No.

7 Q. You were working for individual
8 companies within the control area who might be
9 pursuing like a transaction?

10 A. That's correct.

11 Q. That's correct, okay. So the type of
12 work that you have done -- I will try not to make
13 an issue of it being confidential so that we can
14 move forward -- would be of the nature of the
15 specific types of assignments that are referenced
16 in response to Request Number 14?

17 A. Yes.

18 MS. READ: David, it would move things along
19 and I could finish up quite quickly if we marked
20 the response to Request Number 14 into the record
21 as a ComEd Cross Examination Exhibit 2.

22 MR. FEIN: That's fine.

1 MS. READ: And we may need copies but we will
2 see how many we can come up with. Mr. Revethis has
3 kindly offered to see if he can make a few copies
4 or we may be able to pull them, but we will come up
5 with copies before I am done.

6 EXAMINER JONES: Do other parties want a copy
7 of that?

8 MR. FEIN: I'm sorry, what were you marking
9 that?

10 MS. READ: ComEd Cross Exhibit 2. I think
11 that's only our second one on reopening, whatever.

12 Q. Would you look at page 21 of your
13 testimony. Do you see the reference on lines 6 and
14 7 to Edison's new proposal?

15 A. Yes.

16 Q. Do you know whether that proposal was
17 first made in the initial brief NewEnergy Midwest
18 filed in this proceeding on November 3, 2000?

19 A. I believe that that is the case based on
20 what I heard today, but I did not know that. I
21 thought, based on what I read, that it was an
22 Edison proposal.

1 Q. What did you read that made you think
2 that was Edison's new proposal?

3 A. I can't remember. I don't recall the
4 specific --

5 Q. Could it have been something someone
6 told you?

7 A. I doubt it.

8 MR. FEIN: I object.

9 Q. But you are not sure of what that
10 conclusion was based on?

11 A. Once again, it was based on something
12 that I read and maybe I misinterpreted.

13 Q. Do you remember reading the Hearing
14 Examiner's proposed order in this proceeding in
15 drafting your testimony?

16 A. The hearing order what?

17 Q. The Hearing Examiner's proposed order?

18 A. I did read that, yes.

19 Q. You did read that. On page 18 of your
20 testimony you make a reference to a Hearing
21 Examiner's conclusion?

22 A. Yes.

1 Q. Was that your own interpretation of the
2 order or was that an interpretation that evolved
3 through your discussions with NewEnergy?

4 A. I can't recall whether it was one versus
5 the other. But I do know that if you read page 117
6 of that --

7 Q. Well, if I could approach the witness?

8 MR. FEIN: Sure.

9 (Whereupon said document
10 was provided to the witness
11 by Ms. Read.)

12 Q. Let me give you a copy of page 117.
13 Wasn't the statement, "While there is evidence
14 suggesting the utility's methodologies do not fully
15 reflect the costs associated with serving uncertain
16 load, the Commission agrees with contentions by
17 Staff and several other parties that the record
18 simply does not contain a viable approach for use
19 in quantifying an optionality adjustment"? Isn't
20 that the full statement?

21 MR. FEIN: I would object to this line only on
22 the grounds that the proposed order will speak for

1 itself.

2 MS. READ: I would be happy to make a motion
3 to strike lines 12 through 16 of page 18 and agree
4 that the proposed order does speak for itself. But
5 we have a witness who claims he made a conclusion
6 looking at the order and he's got an incomplete
7 sentence.

8 MR. FEIN: Well, doesn't that go to the weight
9 of his cross testimony?

10 MS. READ: That's what cross examination is
11 intended to bring out.

12 THE WITNESS: A. Just because the record
13 doesn't contain a viable approach right now for
14 quantifying it doesn't mean that the Staff doesn't
15 agree that the costs aren't fully reflected.

16 Q. There was no finding that the utility's
17 methodologies do not fully reflect the costs,
18 correct? There was a statement that there was some
19 evidence suggesting that might be the case,
20 correct?

21 A. That's right.

22 Q. And the sentence also didn't end with

1 the period that you have in your testimony,
2 correct?

3 A. It's not a quote either.

4 Q. It's not a quote in your testimony,
5 lines 15 through 16, the part in between the
6 quotation marks?

7 A. (Inaudible).

8 MS. READ: Did you get that?

9 THE REPORTER: No.

10 MS. READ: He said, "Well, that's a mistake."

11 Q. In making this statement on page 18 of
12 your testimony, I mean at page 18 of your
13 testimony, did you consider or do you recall
14 reading page 118 of the HEPO and in particular the
15 statement "In fact, the reasons for rejecting an
16 optionality adjustment as are articulated
17 immediately above also appear to be applicable to
18 the off-peak load shape adjustment"?

19 A. Well, I wasn't dealing with off-peak so
20 I didn't put much credence in that, wasn't reading
21 that.

22 Q. You weren't reading the sentence about

1 rejecting an optionality adjustment?

2 A. For off-peak, no, I wasn't.

3 Q. Can you tell me in your own words what
4 good faith scheduling is?

5 A. In my own words what good faith
6 scheduling is?

7 Q. Yes.

8 A. It's coming up with a load forecast that
9 you believe is true and scheduling of appropriate
10 resources to meet that.

11 Q. Have you read through the tariffs in
12 ComEd's service area on good faith scheduling?

13 A. I don't recall that I have, no.

14 Q. Do you recall whether you read Steve
15 Naumann's testimony filed in this proceeding?

16 A. I read some of his testimony. I don't
17 know if I have read all of his testimony.

18 Q. Is it correct you yourself have never
19 done good faith -- strike that. Is it correct that
20 you yourself have never scheduled deliveries of
21 power and energy under the Open Access Transmission
22 Tariffs?

1 A. That's correct.

2 Q. And you have never been involved in a
3 project that relates to the scheduling of
4 transmission under those tariffs?

5 A. I have never been, no.

6 Q. Do you know how imbalance costs are
7 accounted for in transition charges and power
8 purchase option prices in Illinois?

9 A. Probably not entirely, no.

10 Q. Have you ever read through the ComEd
11 tariffs relating to imbalance costs?

12 A. No.

13 MS. READ: Your Honor, I would move for the
14 admission of ComEd Exhibit Number 2 and which three
15 copies of which are being provided to the court
16 reporter as we speak. And particularly given the
17 hour and our desire to all move along here, I will
18 rest with that.

19 EXAMINER JONES: Any objection to the
20 admission of ComEd Exhibit Number 2 On Reopening?

21 MR. FEIN: Cross exhibit, right?

22 MS. READ: Yeah, ComEd Cross Exhibit 2.

1 EXAMINER JONES: Right. It will be ComEd
2 Cross Exhibit Number 2 On Reopening, that's
3 correct. Any objection to that?

4 MR. REVETHIS: No objection.

5 EXAMINER JONES: Let the record show that
6 ComEd Cross Exhibit Number 2 On Reopening is
7 admitted into the evidentiary record. That says
8 Response -- in part it says "Response of NewEnergy
9 to ComEd's Second Set of Data Requests, Request
10 Number 14, Response."

11 (Whereupon ComEd Cross
12 Exhibit Number 2 On
13 Reopening was marked for
14 purposes of identification
15 as of this date and admitted
16 into evidence.)

17 EXAMINER JONES: Was there another party who
18 had some questions for this witness?

19 MR. LAKSHMANAN: Yes.

20 EXAMINER JONES: Mr. Lakshmanan.

21

22

1 CROSS EXAMINATION

2 BY MR. LAKSHMANAN:

3 Q. Thank you. Good evening, Mr. Somers.

4 A. Good evening.

5 Q. Could you please turn to page 8, line 2,
6 of your testimony and in particular I believe there
7 is a statement there that reads the owner of an
8 option always holds something with tangible value?

9 A. Yes.

10 Q. Is that correct?

11 A. That's correct.

12 Q. Does the fact that the owner holds
13 something of tangible value depend on who the owner
14 is?

15 A. Sometimes that can be the case, yes.

16 Q. Would you please describe what a put
17 option is?

18 A. A put option is the right but not the
19 obligation to sell a certain quantity of an
20 underlying asset at a specific price on or before a
21 specific time.

22 Q. Could you also please describe what a

1 call option is?

2 A. The option to buy an asset at a
3 specified price for a specific quantity at -- not
4 necessarily a specific quantity but a quantity of
5 time in the future.

6 Q. Thank you. If a consumer must pay a
7 fixed price for a commodity that they consume
8 during the period when the cost of that commodity
9 is lower than the price paid, could that be
10 characterized as a put?

11 A. Could you say that again, please?

12 Q. Certainly. If a consumer must pay a
13 fixed price for a commodity that they consume
14 during the period when the cost of that commodity
15 to the provider is lower than the price paid, could
16 that be characterized as a put?

17 A. It's probably a combination of a call
18 and a put, but there is a put involved, yes.

19 Q. Similarly, if a consumer or customer
20 pays a fixed price for a commodity they consume
21 during a period when the cost of that commodity is
22 higher than the price paid, would that be

1 considered a call?

2 A. Sure.

3 Q. Would you please turn to page 11 of your
4 testimony, line 6, and in particular back to a
5 sentence I believe Ms. Read also talked about a
6 little bit. "One is hard pressed to forget the
7 \$7500 per megawatt hour electricity prices that we
8 saw in the Midwest in June of 1998." Do you see
9 that?

10 A. Yes.

11 Q. Where did you come up with the
12 understanding that energy traded at \$7500 a
13 megawatt hour in June of '98?

14 A. Press reports.

15 Q. Do you happen to know if NewEnergy was a
16 party to any of those transactions?

17 A. I have no idea.

18 Q. Do you happen to know how many megawatt
19 hours were traded at that price?

20 A. I understand it wasn't a lot, but I
21 really couldn't -- there was some traded.

22 Q. You don't --

1 A. I don't know how many, no.

2 Q. I'm sorry. I didn't hear, that's all.

3 Do you happen to know for how many hours that

4 energy traded at that price?

5 A. It was for a brief time. I don't know

6 how many hours.

7 Q. Do you happen to know what percentage of

8 the total load served in the Midwest were

9 represented by trades at that value?

10 A. Once again, I don't know specifically.

11 Q. Okay. Moving up a line, you state that

12 there is an actual limit on how low electric prices

13 can go. Do you see that?

14 A. Yes.

15 Q. Could you please describe what that

16 limit is?

17 A. It typically is zero, except in special

18 cases perhaps. But generally zero.

19 Q. When you say generally zero and you are

20 saying in special cases, could it be below zero?

21 A. I think in certain control areas it has

22 been below zero at certain times. I don't believe

1 it can be here, though.

2 Q. You say in certain ones. And I believe
3 on page 3, lines 14 through 15, you talk about the
4 PJM. Are you familiar with the PJM?

5 A. Yes.

6 Q. Are you familiar with whether the limit
7 in PJM is below zero?

8 A. I think the prices had been below zero
9 in the past.

10 Q. Do you know how far below zero they can
11 go? Is there a limit that is built into the way
12 those are priced?

13 A. I do not know.

14 Q. So if you do not know how low they can
15 go, it's not necessarily clear that there is a
16 different negative limit as there is a separate
17 positive limit for the high side which is referred
18 to later in that sentence, is that correct?

19 A. The minimum -- when I say I don't know
20 how low it can go, it is not a specific price. It
21 would be the variable cost of production for
22 someone who wanted to keep their unit running at

1 all times no matter what.

2 Q. That number could be a negative number?

3 A. It could be a negative number in certain
4 control areas.

5 Q. Would you please turn to page 14, line
6 8, of your testimony?

7 A. Yes.

8 Q. And in particular you state that
9 electricity prices are highly dependent on the
10 amount of electricity being demanded on a load at a
11 given time, is that correct?

12 A. Yes.

13 Q. What is the factor in your opinion with
14 the largest impact upon increases in demand above
15 normal levels which would result in these high
16 levels?

17 A. There is no greatest. It could be a
18 tripping of a unit. It could be a weather anomaly,
19 a spike in temperature.

20 Q. So weather could be one of those factors
21 that could affect?

22 A. Yes.

1 Q. Do you happen to know what percentage of
2 the load of a steel mill is dependent upon changes
3 in weather?

4 A. No, I don't.

5 Q. Do you happen to know what percentage of
6 load of a grocery store is dependent upon changes
7 in the weather?

8 A. Off the top of my head, no.

9 Q. Would the same be true for an automotive
10 manufacturer, that you don't know?

11 A. That is correct.

12 Q. Similarly for a fast food restaurant?

13 A. I typically have dealt with pools rather
14 than individual entities, that is correct.

15 Q. A hospital, a university?

16 A. Correct.

17 Q. You don't know for any of those what
18 percentage?

19 A. I do not know for any of those specific
20 individual items, no.

21 Q. In general in your testimony you refer
22 to potential increase in costs that are provided to

1 serve an uncertain load, is that correct?

2 A. Yes.

3 Q. Are there any times that this variance
4 of load actually provides a benefit to the
5 supplier?

6 A. That's a very open end question. Yes,
7 there could be instances but that's not generally
8 the case. But there could be instances.

9 Q. But that could occur?

10 A. It is possible.

11 Q. And that has been accounted for in your
12 testimony or in the models that you propose that
13 Illinois Power or others adopt?

14 A. If I were to build said model, yes, I
15 would account for that.

16 Q. But you have not actually proposed such
17 a netting out or an accounting for the other side
18 of it where it is actually a benefit?

19 A. I haven't proposed either way. I just
20 said that the quantifying the risk of serving an
21 uncertain load could be done with an option-style
22 model.

1 Q. And that quantification could actually
2 also include a benefit to the supplier?

3 A. And it would be my experience that the
4 net would be -- there would not be a net benefit.
5 In fact, it would probably be a several percentage
6 raise in costs.

7 Q. But, nonetheless, it needs to be taken
8 into account, both sides of that, the benefit and
9 the cost?

10 A. That would be a good way of modeling it,
11 I believe, yes.

12 MR. LAKSHMANAN: Thank you. No further
13 questions.

14 EXAMINER JONES: Thank you. Is there any
15 redirect, Mr. Fein?

16 MR. FEIN: Can I have five minutes?

17 EXAMINER JONES: Okay. We will take a five
18 minute break.

19 (Whereupon the hearing was
20 in a short recess.)

21 EXAMINER JONES: Back on the record.

22 Mr. Fein, you have some redirect?

1 MR. FEIN: Yes, very brief, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. FEIN:

4 Q. Mr. Somers, do you remember some
5 questions from Ms. Read regarding the course that
6 you taught at IIT?

7 A. Yes, I do.

8 Q. Approximately how many students took
9 your class?

10 A. I don't recall exactly. I believe it
11 was about 12.

12 Q. What type of profession were your
13 students in?

14 A. Typically made up of two types of
15 people. There were consultants and consulting
16 engineers, and they made up about half. And then
17 people from various local utilities made up the
18 other half.

19 Q. Which local utilities were people from?

20 A. Local people from ComEd, some people
21 from Peoples, Nicor, and wherever the utility
22 people come from.

1 MR. FEIN: Nothing further.

2 EXAMINER JONES: Is there any recross?

3 MS. READ: No.

4 EXAMINER JONES: Thank you, Mr. Somers.

5 (Witness excused.)

6 Okay, Mr. Robertson, did you have a
7 motion you wanted to make?

8 MR. ROBERTSON: Yes, sir. I could make the
9 motion in writing if you prefer. But I would ask
10 the Commission to take administrative notice of
11 portions of Commonwealth Edison's FERC Form I for
12 December 31, 1999, relating to the sales and
13 purchases of Commonwealth Edison for the 12 months
14 ending December 31, 1999, stated in megawatt hours.
15 I have a copy of the page which I can attach to the
16 motion if you would prefer me to make this motion
17 in writing.

18 EXAMINER JONES: Now, is ComEd going to have
19 any objection to that motion?

20 MS. READ: Yes, and I can state the objection
21 now.

22 EXAMINER JONES: Before we get to that, it's

1 really a case of whether this motion is to be put
2 into the form of a written motion or not.

3 Mr. Robertson, what's the basis for your motion?

4 MR. ROBERTSON: In the course of discovery in
5 the reopened case we asked Commonwealth Edison to
6 produce or provide these numbers. And their
7 response was you have our Form 1099, and they
8 didn't provide the numbers. They referred to their
9 Form 1099. And at transcript page 1205 to 1206
10 witness Crumrine, who was part of the panel that
11 Mr. Nichols was on, accepted subject to check
12 certain information from the Form 1099 relating to
13 some of the sales made by Commonwealth Edison
14 during that same period of time from the same
15 document. So I don't think the Company can say on
16 one hand that they are asking --

17 EXAMINER JONES: All right. I'm sorry to
18 interrupt you. That gives me an idea. I think we
19 need to see that in writing. That's getting a
20 little bit complicated there. So I think we
21 probably -- given the schedule here, that needs to
22 be done rather quickly. All right. Will ComEd or

1 others want an opportunity to respond to that?

2 MS. READ: Yes. For one thing, I don't
3 believe it's allowed by the Commission's Rules of
4 Practice, but I am happy to state that in writing.

5 EXAMINER JONES: When do you propose to file
6 that motion or, more importantly, get a copy served
7 on ComEd and anybody else that wants to see it?

8 MR. ROBERTSON: I can serve it by noon on
9 Friday. Is that acceptable?

10 EXAMINER JONES: That's pretty late. The
11 briefs are due, what, next Tuesday.

12 MR. ROBERTSON: The briefs are due the 6th.

13 MR. LAKSHMANAN: Which is Tuesday, right.

14 MR. ROBERTSON: How about by noon on Thursday?

15 EXAMINER JONES: All right. So you will file
16 the -- you get the motion filed or at least put in
17 the mail on Thursday but copies of it will be
18 served on ComEd and others, including me, by noon
19 on Thursday.

20 MS. READ: Meaning in hand to you on Thursday?

21 EXAMINER JONES: Right. That's correct, in
22 hand by some means.

1 MR. ROBERTSON: Electronic, if that's all
2 right.

3 EXAMINER JONES: Electronic is fine. How long
4 does ComEd need to respond to that?

5 MS. READ: Well, I would say we would try to
6 respond by end of the day Friday, except for this
7 conference call that IIEC is arranging, I believe,
8 is taking a good part of the day on Friday.

9 MR. ROBERTSON: That is something else we
10 wanted to talk about when we get to it. I will try
11 to file it before then but I will file it no later
12 than noon on Thursday.

13 MS. READ: Well, say if I get it done by -- if
14 you get it to me by end of the day Wednesday, I
15 will try to have our response by end of the day
16 Friday. If you get it to me on noon on Thursday,
17 depending on the schedule for what you have asked
18 us to do on Friday, I may not be able to get it in
19 until noon on Monday.

20 EXAMINER JONES: Mr. Robertson?

21 MR. ROBERTSON: What is Monday, the 5th? Yeah,
22 I am not going to say that -- I have no idea

1 whether or not they can accommodate a filing by
2 noon on Friday and I am not going to argue with
3 them about it. If they can't do it, it is not
4 within their capability, I understand.

5 EXAMINER JONES: You are standing by noon on
6 Thursday for your filing?

7 MR. ROBERTSON: Yeah. If I do it sooner, then
8 I would expect the Company to file sooner, like
9 maybe within 24 hours.

10 EXAMINER JONES: Well, here is the schedule.
11 IIEC will file it by the time that was indicated a
12 minute ago. ComEd will file a response by noon on
13 Monday. The official filing will be made by mail
14 or other means any time Monday but copies will be
15 provided to IIEC counsel, other parties and to
16 other participants including me by noon on Monday,
17 electronically.

18 All right. There are a couple of other
19 things. There are, as the parties are aware, some
20 proprietary exhibits that have been put in on
21 reopening and there are some in camera portions of
22 hearings today. I think the last time around prior

1 to reopening there was a list put together
2 indicating what parties would have access to what
3 confidential information. I think that's something
4 that we probably need to do at this stage as well
5 so that the parties and the Clerk's office will be
6 fully aware of which parties have access to what.
7 And that goes for proprietary exhibits and to in
8 camera transcript portions. So any suggestions on
9 how best to handle that? I think Courtney Rosen
10 may have worked that up or coordinated that
11 previously at Ms. Read's direction.

12 MS. READ: May I suggest we coordinate on
13 Staff with that? Because Staff is the one -- Staff
14 and the AG has access to all of them. So we will
15 undertake to circulate a list to the two of them
16 and have them edit it and have them send it out to
17 all the parties.

18 MR. REVETHIS: That would be agreeable.

19 EXAMINER JONES: Does anybody have any problem
20 with that? Any idea on the time frame on that?

21 MS. READ: We will try to get that done so
22 that it's in final form no later than Friday.

1 EXAMINER JONES: As we mentioned a minute ago,
2 there is already a briefing schedule in place. I
3 think there were page limits on briefs the last
4 time. Of course, that involved a broader series of
5 issues. Do the parties have any problems with a
6 brief page limit of say 30 pages? Is that a
7 problem for anybody? Does anybody have any problem
8 with tables of contents being included in those
9 briefs? They may not be really elaborate, but I
10 think it's helpful to have them in there. Does
11 anybody have any problem doing that? It appears
12 the parties do not, so we will indicate that the
13 page limits will be 30 pages and tables of contents
14 would be included. However, that will not count
15 against the 30 pages, nor would any appendices, as
16 far as that goes, or any cover pages or anything
17 like that.

18 Now, there is one other -- I don't know
19 if the parties have anything else. There is one
20 other area that I need to bring up, however
21 reluctantly, given the hour or otherwise. Some of
22 the confidential exhibits contain a large amount of

1 data or other information that's been designated as
2 proprietary by one party or another. There are
3 large numbers of numbers and percentages and prices
4 and other dollar figures and graphs and various
5 elements that the parties have designated as
6 proprietary. However, as I read through this in
7 looking ahead to doing a proposed order and putting
8 this matter before the Commission for its
9 consideration and discussion, I believe that some
10 of the information in here potentially could be
11 declassified, that is the subject of some sort of
12 redacted filing with the numbers and the price and
13 the graphs and some other information deleted from
14 it.

15 Again, as I look ahead to the matter of
16 a proposed order, Commission public discussion and
17 a final Commission order, obviously we don't know
18 what will be in there in terms of any of this
19 information but I believe there are some
20 conclusions in these documents and some other
21 language in these documents of a textual nature
22 that perhaps could be included in the public

1 record, so to speak.

2 Now, how to go about that is sort of
3 another challenge because it involves several
4 parties, including three utilities, and the
5 utilities do not have access to each other's
6 confidential information, for that matter. I think
7 Staff had access to all this information and in
8 fact Staff put together some of the exhibits in
9 question here. It would be the Zuraski 8.1, 8.2
10 and 8.3P as in proprietary, the Eacret 9.0
11 Proprietary, and then I think the final page of
12 Mr. Nichols' Exhibit 14.0P as in proprietary. But
13 IP comes into the picture too because one of the
14 Zuraski attachments pertains to Illinois Power
15 Company. In order to provide parties a brief
16 chance to discuss this, we hereby go off the
17 record.

18 (Whereupon there was then
19 had an off-the-record
20 discussion.)

21 EXAMINER JONES: Back on the record. There
22 was an off-the-record discussion regarding certain

1 of the confidential exhibits that have been put in
2 and whether portions of those exhibits' primarily
3 textual content could be made part of the public
4 record versus being proprietary. One concern was
5 that, to the extent that some of this information
6 could be made part of the public record, then the
7 Commission would have the ability to discuss it in
8 public session if they chose to do so. In
9 addition, it could appear then in a public version
10 of document like proposed orders and final orders.

11 In any event, after some discussion I
12 think that one idea that was put forward was that
13 the three utilities, Ameren, ComEd and IP, would
14 each file -- make a filing to me with copies to
15 others who are entitled to see this information in
16 terms of proprietary agreements or otherwise, and
17 those filings would identify in one manner or
18 another those portions of the documents that the
19 utilities believed could be made part of the public
20 record as opposed to being proprietary in nature.

21 The documents in question -- I will
22 provide an opportunity to clarify that in a minute

1 if the parties think that would be appropriate.
2 But the documents in question were Mr. Eacret's
3 confidential rebuttal which is 9.0 P, the page 7 of
4 Mr. Nichols surrebuttal, and then the three
5 attachments marked as 8.1P, 8.2P and 8.3P which
6 were part of Mr. Zuraski's filing on reopening.
7 Was there any -- in terms of timing then I think
8 the parties indicated they would -- Mr. Flynn, when
9 do you think you would be able to get the one in
10 for Ameren?

11 MR. FLYNN: I will make it by Friday.

12 EXAMINER JONES: I think the parties could use
13 their best efforts to make that happen by Friday if
14 they can. Any other -- any points of clarification
15 regarding what form this takes or anything? I
16 think the parties had that pretty well sized up.
17 But anything you wanted to note on the record for
18 that?

19 MS. READ: I think we are talking about
20 highlighting and direct marking by pen directly on
21 the unredacted copy.

22 MR. ROBERTSON: Mr. Examiner?

1 EXAMINER JONES: Yes, sir.

2 MR. ROBERTSON: If you are done, with regard
3 to the schedule contemplated that the parties would
4 gather on Friday of this week which I think is
5 March 2, and my recollection and I have since
6 confirmed it with Mr. Zuraski, was that he was
7 going to reserve a room and that the schedule
8 contemplated that the meeting would be held here in
9 Springfield. He went up to check which hearing
10 room it was going to be in. And he authorized me
11 to make the statement that he would reserve the
12 room.

13 EXAMINER JONES: Oh, okay. And you are just
14 passing that on?

15 MR. ROBERTSON: That's correct.

16 MR. WARREN: But there is also a telephone
17 hook-up. I understand there was going to be a
18 telephone hook-up, is that correct?

19 MR. ROBERTSON: I have not made arrangements
20 for a telephone conference unless the Commission
21 has a room in Chicago to hook-up to the phone in
22 the conference room.

1 MS. READ: I thought there was a call -in.
2 That was my understanding, because I am not going
3 to be in Chicago or here.

4 MR. KAMINSKI: That was our understanding
5 also.

6 MR. ROBERTSON: I just asked Richard. My
7 understanding was he was going to get the room
8 and --

9 MS. READ: Eric, can you arrange for a phone
10 bridge? Because my notes indicated that IIEC was
11 going to be arranging for that.

12 MR. ROBERTSON: That's not my recollection.
13 What I would like to do is find out from the Staff
14 whether or not parties in Chicago can participate
15 through the phone center at the Illinois Commerce
16 Commission. And if anybody is left after that, I
17 assume you would be, then I will take a look at
18 furnishing the phone bridge. I am not sure how to
19 do that.

20 MS. READ: I am one person who is left, and
21 Courtney is very good at setting these up if you
22 want to consult with her.

1 EXAMINER JONES: Do the parties have anything
2 else? Let me just back up a minute to the Friday
3 filing regarding those confidential exhibits.
4 While the basic filings will be sent to a limited
5 number of recipients, all parties should be
6 provided some notice on that day or copies of some
7 portion of that filing indicating that it was done
8 on whatever day it was done so they can be aware of
9 where the status of that is.

10 MR. REVETHIS: Just for purposes of
11 clarification, you are responsible for the phone
12 bridge? Because I thought you were setting this
13 up.

14 MR. ROBERTSON: I am going to see what the
15 cost of it is. If it is expensive, I am not
16 committing to do it.

17 EXAMINER JONES: Off the record.

18 (Whereupon there was then
19 had an off-the-record
20 discussion.)

21 EXAMINER JONES: All right. Back on the
22 record. I think we are basically ready to resume.

1 But just let me ask very quickly does anybody have
2 any objections to that procedure that was outlined
3 a few moments ago regarding the submission of the
4 redacted confidential exhibits? All right. They
5 do not. That's the procedure that we will use.

6 Is there anything else anybody has for
7 the record at this time? If there is not, we will
8 close the record today then, and that will be
9 subject to the motion for which leave has been
10 given to IIEC to file. At this time then let the
11 record show this matter is marked heard and taken
12 on reopening. Thank you, all.

13 HEARD AND TAKEN

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1 STATE OF ILLINOIS)
)SS
2 COUNTY OF SANGAMON)
CASE NO.: 00-0259/0395/0461 Consolidated
3 TITLE: COMMONWEALTH EDISON CO./CENTRAL ILLINOIS
PUBLIC SERVICE COMPANY, UNION ELECTRIC
4 COMPANY/ILLINOIS POWER COMPANY

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6 W, Cheryl Davis and Carla Boehl, do hereby
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12 foregoing pages are a true and correct transcript of
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